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INTERNATIONAL ARRANGEMENTS AND AGREEMENTS RELATING TO TRANSNATIONAL CORPORATIONS

International framework for transnational corporations

Report of the Secretary-General

SUMMARY

The present report focuses on the impact of recent policy changes affecting foreign direct investment on the elaboration of international principles and standards. A review of some of the changes that have taken place in recent years leads to the preliminary finding that those and other factors - principal among them the increasing globalization of the world economy - increase the need for an international framework for foreign direct investment. The report summarizes the background and evolution of the international framework for transnational corporations up to the present time. It takes stock of the international principles and standards that have been elaborated during the second half of this century and evaluates, in the light of current State practice, the extent to which these norms have remained relevant. The report finds that many of these principles are still valid. But the manner in which some of these standards are being used and applied by Governments and transnational corporations in the pursuance of their current policy objectives reflects the new circumstances. Still on several issues which remain important for the functioning of the transnational corporation in today's economic conditions, consensus has not yet been reached. At the same

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time, the close interrelations between investment, trade and finance have emphasized the significance of certain aspects such as the right of establishment and commercial presence. These issues and new ones arising on the international agenda, which are also discussed briefly in the report, give new perspectives to traditional standards and are an important part of the emerging international framework for foreign direct investment.

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INTRODUCTION

1. At its seventeenth session, the Commission on Transnational Corporations requested the Centre on Transnational Corporations to prepare a report on the work on the draft code of conduct on transnational corporations and on other related international arrangements and agreements (bilateral, regional and multilateral). The present report, prepared in response to that request, considers whether recent developments in international economic relations have affected the need for an international framework of principles and standards on foreign direct investment, and discusses the extent to which the present international framework is adequate to meet the challenges posed by these developments. In section I the report reviews the main themes relating to foreign direct investment which have attracted the attention of policy makers in international forums in recent years. Section II provides an overview of the background and evolution of the international framework from the 1940s through the 1980s. Section III takes stock of the international norms and standards that have been elaborated during the second half of this century and assesses to what extent those norms are validated by recent State practice. Since the emerging international framework may also have to deal with a number of new issues - which might not be fully covered under the existing framework - sections IV and V look at some of the new issues arising in the area of foreign direct investment and the responses that have been proposed to deal with them. These issues complete the overall outline of what could be described as the emerging international framework for foreign direct investment and transnational corporations of the 1990s.

I. A CHANGING POLICY ENVIRONMENT FOR TRANSNATIONAL CORPORATIONS

2. One of the main tasks assigned to the Commission on Transnational Corporations is to examine how transnational corporations work, how they interact with States and other public and private entities and international bodies, and to seek generally accepted standards for both their activities and the treatment of them by Governments. Although an agreed global set of standards has not yet emerged from these efforts, the work of the Commission and of the United Nations Centre on Transnational Corporations has significantly contributed to a broad consensus on most of the matters at issue.

3. In this field, as in some others, theory is sometimes slow to recognize standards established by practice. New relationships now exist - and seem likely to persist - between the Governments of developing countries and foreign direct investment.

4. One such new relationship relates to the format of foreign direct investment which has in several respects become increasingly diversified over the years: the importance of non-equity investment has become evident, while mutual funds (especially open-end mutual funds) afford small individual investors the opportunity to invest in developing as well as developed economies.

5. The structures of transnational corporations have also changed in response to changing world circumstances. The spread of transnational mergers and acquisitions as well as corporate alliances has resulted in many transnational corporations having their operations and - perhaps more importantly for present purposes - their decision-making centres distributed over the world. The unitary transnational corporation, with headquarters and ownership in one country, controlling mainly through equity ownership a number of producing or distributing facilities in other countries, is rapidly yielding to the transnational corporation that has ownership and control interests in several countries.

6. Intensified competition among transnational corporations makes factors such as supplies, markets, skills of workers, or transportation facilities determine where production and distribution will be most effective and will, therefore, take place. As a result, the home base of a transnational corporation, in terms of production facilities, is more likely to be a scattered collection of sites than a single place attached to the "nationality" of the corporation. These changes have a number of important consequences in the legal as well as economic environment for standards and norms.

7. Changes in the distribution and concentration of foreign direct investment among countries have also altered traditional classifications of countries as "home" and "host" of transnational corporations. Not only has the previous economic predominance of one country vanished, but many developed countries (and some developing countries) are increasingly becoming "home" as well as "host" countries. As a result, traditional divisions of "home" and "host" countries tend to lose some significance in terms of identifying with issues relating to treatment or behaviour of transnational corporations and suggest a more balanced approach to foreign direct investment issues.

8. In parallel with these changes, the policy environment for foreign direct investment has also changed dramatically in recent years, mainly in response to changing economic conditions. Many countries which in the past limited foreign equity investment and imposed other restrictions on the control and operations of transnational corporations have liberalized their investment regimes and provided supplementary protection guarantees to foreign investors in order to attract additional flows of foreign capital and technology.

9. Nationalization and expropriation was for a time considered a likely method for bringing natural resources and basic aspects of a country's infrastructure under national ownership and control. But in the 1980s there was a substantial decrease in the incidence of nationalizations, and they are even less likely to occur in the 1990s. This may be so in part because nationalization has not proven to be economically profitable to the host country; and privatization, not nationalization, is now the preferred policy in developing as well as in developed countries. These efforts are part of broader trends aimed at giving greater weight to the operation of market forces in the world economy.

10. Liberalization of regulation of foreign direct investment has spread also to specific sectors, notably to a number of service industries which traditionally included some of the most heavily regulated business activities. In particular, the liberalization of the financial markets has revolutionized business operations worldwide. A direct consequence of these policy changes has been a significant improvement in the overall investment climate of most countries.

11. Another equally important result of these policy trends has been the increasing transnationalization of the world economy. The process of global economic integration has been enhanced by a number of important developments in central and Eastern Europe, now moving in the direction of economic reform. At the same time parallel movements towards closer regional economic integration are affecting the strategies of both Governments and transnational corporations regarding transnational investment and operations considerably.

12. All these and many other factors reflect not only changing perceptions of investors and Governments and the impact of market forces but also new challenges for which an international framework is necessary.

13. To some extent, these challenges are those perceived during the period of the 1950s, 1960s and 1970s; to a considerable extent, they are new challenges - if only because many of the issues previously regarded as vital now have much lesser significance in relations between transnational corporations and Governments. Indeed, in the 1980s, international discourse and practice with respect to foreign direct investment and transnational corporation activity has undergone a vast and dramatic change from the conventional and accepted doctrinal format of the discussion that ran from the 1940s through the 1970s. This change in approaches and basic perceptions necessitates an evaluation of the international framework for foreign investment that began to be formed during those years.

14. For a useful analysis of the international framework it is essential to take stock of current theory and practice, based on both internationally agreed documents and concepts and principles that have been generally recognized or accepted on the basis of what has become uncontested practice. Thus, a realistic analysis of the current international framework on foreign direct investment would include:

(a) International agreements signed or endorsed by States;

(b) Voluntary standards elaborated or accepted by the subjects to whom they are addressed;

(c) State practice, particularly as it relates to the application of international norms and the implementation of international commitments.

15. It has been a subject of long debate whether customary international law is created by such expressions of will as General Assembly resolutions or whether such resolutions reflect, even if they do not create, international

law. With respect to binding agreements, the question has been raised as to whether the large and growing number of bilateral and regional agreements which contain clauses protective of foreign investment plus the increased membership in multilateral mechanisms, such as the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the Multilateral Investment Guarantee Agency (MIGA), are accurate indicators of the status of international norms. Words, of course, have significance. Actions in implementation of these words - or possibly in refutation of them - may also carry significance. Acceptance and observance of voluntary standards may be just as important an indicator of the will of the international community on the status of international law.

II. FORMATION AND EVOLUTION OF THE INTERNATIONAL FRAMEWORK

16. International standards to govern the activities of transnational corporations and the treatment to be accorded them by national States have been a subject of debate for many years in a number of forums. Initially, expressed international concern had been mainly that of the industrialized nations on behalf of private investment. For example, articles 11 and 12 of the abortive Havana Charter were an attempt to include protection of private foreign investment into what had until then been a proposal focused on international trade, though in some ways those articles anticipated the later calls for standards of good conduct on the part of the investor. 1/ The Abs/Shawcross draft agreement which attracted much support from developed countries was addressed almost entirely to protecting the rights of private foreign investment, both as to ownership and as to freedom from "undue" restraints on operations of transnational corporations. 2/ Similarly, the 1967 draft convention on the protection of private foreign investment, proposed by the Organisation for Economic Cooperation and Development (OECD) was an explicit effort to write protection of private foreign investment into an international agreement. 3/

17. Two basic positions, held separately by developed and developing countries, emerged during the period under review. The Western developed nations supported the view that transnational corporations, with their capacity to channel capital, technology, skills and other vital resources across national borders, could play a key role in world economic development. Consequently, foreign direct investment needed to be protected and facilitated. The developing countries, on the other hand, stressed the need for transnational corporations to adhere to the development objectives of host countries and to conduct their operations in a manner consistent with the public interest. These countries, concerned about the ability inherent in the transnational nature of the transnational corporation to avoid national jurisdiction, urged that such corporations had to be brought under some form of national and international control and supervision.

18. The efforts of the developing countries to shape a more equitable international economic order led to the elaboration of a number of new concepts and principles, notably the principle of permanent sovereignty over

natural resources and the notion of development as a legitimate expectation of nations and peoples, which brought important practical consequences for investment relations. Not surprisingly, one of the main preoccupations of the home countries of transnational corporations at the multilateral level was the adoption of generally agreed concepts and standards for the protection of investors in the two aspects most directly affected by those principles - namely, State contracts, and nationalization and expropriation. Government positions on these issues, including those within the Western developed countries, were still too distant to permit binding commitments at the multilateral or regional level. Thus, even the OECD draft convention on the protection of private investment (1967) failed. Still, there was an important achievement during this period with the adoption of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States under the auspices of the World Bank. 4/

19. Another significant step was the adoption in 1962 by the General Assembly of resolution 1803 (XVII) affirming "the right of peoples and nations to permanent sovereignty over their natural wealth and resources". That resolution is still regarded as an authoritative statement by the United Nations of the principles of international law applying to foreign investment.

20. In parallel with these efforts, the developed countries initiated action progressively to liberalize existing obstacles to the free flow of capital and foreign direct investment among these nations. Such actions materialized in the adoption of the OECD Code of Liberalisation of Capital Movements and the Code of Liberalisation of Current Invisible Operations (1961). 5/

21. Some of the legal issues on the treatment of foreign investment between developed and developing nations (roughly corresponding with capital-exporting and capital-importing countries) were dealt with on a bilateral basis with the conclusion of bilateral investment treaties (which were introduced in the 1960s). These treaties prescribed general standards of treatment for foreign investors and some specific protection rules on expropriation, transfer of payments and settlement of disputes, on a reciprocal basis. The question of entry and establishment for foreign investors was left to the domain of national law, except in the context of the OECD liberalization codes, where these issues were first brought into the international discourse, and later in the context of regional integration agreements, such as the European Communities (EC).

22. During the 1970s concern about the economic impact of transnational corporations - their ability to shift production from country to country, to the advantage of the corporation but not necessarily of the nations involved - were compounded by reports of interference in political affairs of nations, of corruption and illicit payments, and the like. At the same time, efforts on the part of transnational corporations and their home countries to obtain better protection for foreign investors and concerns over excessive regulation or over criteria for corporate conduct which imposed excessive costs on transnational corporation operations remained a strong part of the total picture.

23. The adoption of decision 24 of the Cartagena Agreement in 1970 marked the beginning of a series of efforts to align the activities of transnational corporations with the development needs and objectives of host countries. Shortly thereafter, in 1976, the members of OECD adopted the Guidelines for Multinational Enterprises which prescribed standards of corporate conduct but also included norms on national treatment, incentives and disincentives and intergovernmental consultations.

24. At the multilateral level, a number of instruments were initiated (and some concluded) dealing with specific aspects of the activities of transnational corporations - namely, employment and labour relations, restrictive business practices, illicit payments and transfer of technology. Parallel to these were the efforts to establish a comprehensive and global framework for foreign direct investment and transnational corporations, which began in the Commission on Transnational Corporations in 1977. As is well known, the formulation of standards for the behaviour of transnational corporations in host countries encountered little difficulty, and by 1981 most provisions dealing with the activities of transnational corporations had been drafted. These provisions shared the common goal of maximizing the contributions of the corporations to the economic and social development of the countries in which they operate and of minimizing their potential negative effects.

25. The elaboration of these instruments led to the definition or clarification of a number of international standards for the activities of transnational corporations rooted in the overall notion of the sovereign discretion of each State over foreign investment policy within its jurisdiction. Thus, a number of standards for transnational corporation behaviour, such as non-interference in internal affairs of host countries and adherence to development objectives and policies of host countries, were formulated during this period. While the differences in political and economic priorities did not facilitate common approaches at the multilateral level, the formulation of general standards laid the ground for the adoption of more specific provisions in such areas as disclosure of information, environmental and consumer protection, restrictive business practices, the avoidance of corrupt practices and transfer pricing, parent/affiliate relations and labour relations.

26. In the 1980s much of what seemed self-evident in the 1970s changed and new circumstances appeared which contributed to shape the international legal/economic landscape. Developing countries began to change their approaches and policies towards foreign investment and to take advantage of the possible contributions of foreign direct investment to economic development through the transfer of capital, technology, know-how and access to markets. This change was facilitated by a number of pressing practical considerations, since the drying up of the external financing by commercial banks led to severe capital shortages by these countries, which made earlier objections to the terms required by foreign investors less significant as a basis for economic policy.

27. In international forums the new attitude resulted in the capital-exporting countries' taking the opportunity to place renewed emphasis on their traditional concerns regarding the promotion and protection of investment and to raise these concerns in the context of trade negotiations. At the same time, efforts continued to formulate standards for transnational corporation behaviour in specific areas such as consumer and environmental protection or disclosure of information.

28. These developments also influenced the negotiations of the Third and Fourth Lomé Conventions between a group of African, Caribbean and Pacific States (ACP) and the European Communities, in 1984 and 1989, respectively. 6/ A draft Euro/Arab convention on the reciprocal promotion and protection of investment was also negotiated during that period. In Latin America, decision 24 was superseded by decision 220 and, more recently, by decision 291, which abolished the previous restrictions on foreign investments in the Andean region. Following the success of the European integration arrangements, other regions began to establish their own free trade zones which facilitated intraregional investment (i.e., the Caribbean Common Market (CARICOM) and the Preferential Trade Area of Eastern and Southern African States (PTA). Meanwhile, developed market economies continued their policy of concluding bilateral investment treaties for the promotion and protection of foreign investment. A number of countries, notably in Central and Eastern Europe and in Latin America, began to sign bilateral treaties during this period.

29. At the multilateral level, the adoption of the Multilateral Investment Guarantee Agency (MIGA) to provide insurance coverage for non-commercial risks to investors in developing countries represented another successful move to facilitate and protect foreign investment. It complemented similar national programmes in capital-exporting countries (e.g., Overseas Private Investment Corporation).

30. Since 1981, the negotiations on the draft code of conduct on transnational corporations focused mainly on the provisions dealing with the treatment of these firms by Governments. Through long and difficult negotiations, an understanding was reached on the formulation of standards on issues such as fair and equitable treatment, transparency of national regulations and confidentiality of information. In other matters, such as the applicability of international law to foreign investment, compensation for expropriation, transfer of payments, settlement of disputes, conflicts of jurisdiction and conflicting requirements, the negotiations helped to clarify the concepts and issues involved in the formulation of these principles.

31. Efforts to specify the responsibilities of transnational corporations during this period led to the adoption of a number of instruments on consumer and environmental protection while international standards on accounting and reporting were established as a result of the work of international working groups of experts in the United Nations, OECD, and other institutions.

III. PRESENT INTERNATIONAL FRAMEWORK: SYNOPSIS AND EVALUATION

32. It would be premature to attempt to characterize the 1990s in terms of attitudes and approaches to economic issues in general, and to foreign direct investment in particular. Many of the geopolitical and economic changes that have taken place so far have been the result of the economic policies and theories put in operation during the previous decade, but the magnitude of these changes and their consequences are still not clear. While waiting for the full picture to emerge, a pragmatic approach to economic issues is beginning to dominate the international dialogue.

33. From the viewpoint of the international framework addressing the role of foreign direct investment and transnational corporations in economic development, this means basically that, while some basic controls remain, foreign investment is now invited and encouraged; and privatization of State enterprises is seen as the best path to development. Since natural resources and public utilities passed into the public domain in the 1970s, the question of nationalization and expropriation has lost some of its political significance in State/foreign investor relations.

34. These developments and changes do not necessarily mean that fundamental issues no longer require - or would not benefit from - internationally agreed norms and standards. Indeed, as illustrated below, the closer interweaving of the economies of the world have increased the need for internationally agreed standards. The question is no longer whether international norms should exist but whether the international framework as it exists today is sufficient - or, indeed, adequate - to ensure stable, reliable and mutually beneficial foreign investment relations in the new economic and political landscape.

A. Settled issues

35. With respect to conventional issues involving foreign direct investment/transnational corporations and host Governments, most of the basic principles which were already settled in previous decades remain unchallenged.

36. These include, first, a number of general concepts relating to the operations of transnational corporations, deriving from the basic principles of State sovereignty and jurisdiction, most of which are well established by international law and practice. Their significance for the framework on transnational corporations stems from the transnational nature of the structure and operations of these enterprises and the role of the State in the present system of international law. Among these are:

(a) Observance of local laws and regulations. It is a settled principle of international law that transnational corporations are subject to the laws of the country in which they operate. The principle is a direct consequence of the conventional and customary rules of public international law on State sovereignty and jurisdiction;

(b) Permanent sovereignty of nations over their natural wealth and resources. The concept of permanent sovereignty is qualified by the State's obligation to respect international law and international agreements subscribed by it;

(c) The right of every State to prescribe the conditions under which transnational corporations enter and operate within its national jurisdiction. The sovereign right to regulate entry of foreign investment still persists. However, recent State practice points to undeniable liberalization of the conditions for entry;

(d) Adherence to the economic and social goals and objectives of the host country. This standard is found expressly or by implication in all framework instruments dealing with foreign direct investment/State relations. It is a voluntary standard that goes beyond the strictly legal requirements to cover situations where transnational corporations are called upon to conduct their business operations in a manner which is not damaging or inconsistent with the general policy objectives and priorities of the host countries;

(e) Abstention from corrupt practices in international business transactions. The duty of avoidance of corrupt practices applies equally to government officials and business enterprises, and to intermediaries;

(f) Non-interference in internal political affairs of the host country. The duty of non-interference extended to foreign corporations and individuals is now accepted as one of the international standards applying to foreign investment.

37. What has perhaps changed is the manner in which these standards are being used, interpreted and applied by Governments and transnational corporations in the pursuance of their current policy objectives. Thus, for example, while the principle that States have sovereign discretion to determine the entry and establishment of foreign investment has remained unchallenged, many Governments are now using their discretionary powers conferred under this principle increasingly to liberalize previous restrictions on the entry of foreign investment. The new governmental approaches to traditional principles are also reflected in proposed conventions, agreements or understandings. Similarly, the issue of permanent sovereignty over natural resources - once a major source of controversy - has become fairly settled as a result of the State's practice, reflected in many successful and mutually beneficial contractual arrangements with foreign investors.

38. It is therefore expected that such norms and standards, when written in new articles of proposed international instruments or understandings, will reflect the perceptions and approaches that States and enterprises now bring to the international negotiating table. It is also expected that, when applied today, such norms will equally reflect the new circumstances.

39. Secondly, the international framework includes a host of specialized standards. Indeed, as a result of years of investigation, international discussion and agreements, a network also exists of standard-setting

understandings on matters such as accounting principles, reporting of corporate structures and operations, criteria for consumer protection, fair trade practices (mainly in the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices), transfer pricing, standards for labour and working conditions, health and safety conditions; in short, in areas which are susceptible of definition, and in which a measure of regulation in the public interest is generally recognized as necessary. Standards are in place in specific areas such as restrictive business practices, transfer pricing, consumer and environmental protection etc. These standards and principles reflect the modicum of regulation akin to what exists in domestic legislation of many countries for the functioning of a market economy in a democratic society.

40. Thirdly, with respect to the treatment of transnational corporations by host countries, a number of standards have been established through conventional instruments and/or international and national practice. Among these are:

(a) Fair and equitable treatment. This principle would include certain concepts such as non-discrimination, and non-arbitrariness in the application of the law;

(b) Minimum protection under the law. It contains in substance the notion of due process as well as some of the principles that are now considered part of fundamental human rights;

(c) Expropriation and nationalization. There is general consensus that a State may not expropriate the property of an alien, except for a public purpose, in a non-discriminatory manner, upon payment of compensation.

B. Issues on which consensus is still to be achieved

41. There are still unresolved issues. For example, aspects of theory and practice involving extraterritoriality continue to be troublesome. So do issues relating to national treatment or the application of some rules of international law. But the blurring of distinctions between home and host countries and perceptions deriving from observed practice may alter the format of the debate.

1. Applicability of international law to foreign investment

42. It should be noted that while there are still a number of countries which continue to object in multilateral forums to the applicability of minimum international standards of customary international law to foreign investors within their jurisdiction, in practice these countries afford similar levels of protection under their national constitutions. These and other principles, which in the past were highly controversial (i.e., recourse to international dispute settlement mechanisms), are now largely being settled through practice, as reflected in new agreements entered into by the countries that opposed them. 7/

2. Compensation for expropriation

43. The diverse positions on the standard of nationalization on expropriation, reflecting doctrinal differences, are seen in the current practice of States to be yielding to reconciliation either through pragmatic approaches being arrived at in specific cases or by incorporating agreed provisions in bilateral investment treaties. In these treaties it is not uncommon to elaborate on the formula used for determining the standard of compensation.

3. Extraterritoriality

44. In the most common sense of the word, extraterritoriality relates to the reach of national law beyond territorial borders. In the present international economic/legal climate, the reach of law and regulation beyond the borders of one country into another is a means of dealing with conduct which both States reprehend. Where that is not the case, and where one country resists the intrusion of the standards of another into its economy, conflict is likely to arise in the North/North dimension, as in the debate over the Soviet "pipeline" case, which pitted United States policy against that of the European Communities, and sought to invalidate contracts already made with the former Soviet Union. Another typical case was that born of antitrust, or restrictive, business practice doctrine, where the United States applied a theory of antitrust which was more strict than that of other nations, and asserted, via the "effects" doctrine of jurisdiction, its authority to regulate activities outside of its borders.

45. It is likely that with the end of the cold war, trends toward consensus on policy in several important areas could make extraterritoriality for security reasons play a minor role in the so-called "trading with the enemy" issues. In other areas, however, extraterritoriality in a sense may prove more, rather than less, important. The extensive network of international economic relations, which is characteristic of the present situation, and the importance of transnational corporations - many of which have a large share within their own systems of international (in the sense of intracorporate) trade - are likely to lead to extensions of national jurisdiction in administration of harmonized regulation of security practices. Extraterritoriality is also likely to be a highly visible factor in the financial services industry. The Bank of Credit and Commerce International case has demonstrated the importance of international linkages and the possible effects if regulation in one country is weak enough to make the consequences of fraud come home to depositors and investors in another country.

46. Although diversity still exists in some areas of importance to States and investors alike (taxation, for example), it has been largely mitigated by the development of doctrine by jurisprudence, including principles of comity which provide guidelines for polite inter-State conduct in regard to assertions of jurisdictional power. At the regional level, the work of OECD has helped in the avoidance of conflicts by adopting an approach of moderation and restraint.

47. To a certain extent, extraterritoriality may contribute to the resolution of issues which are of general, multinational concern but in which the locale of the relevant parties is scattered among several jurisdictions or difficult to locate. Extraterritoriality may indeed be at least a partial solution for cooperative control of undesirable corporate activities - such as securities manipulation - which cross or evade State boundaries. In consequence, it may be a useful methodology, rather than a feared tactic. Thus, this "violation" of sovereignty may be an avenue of cooperation towards a mutually advantageous goal, rather than a cause of friction.

4. National treatment

48. National treatment - that is, according to non-nationals operating in a foreign country, treatment at least equal to that given to that country's own nationals - has been and continues to be an unsettled issue, though in this area, the practice of countries has been considerably narrowed. Commitments to national treatment are customary in treaties of friendship, commerce and navigation, as well as in bilateral investment treaties. Even in these instruments, exceptions to national treatment tend to be broad and far-reaching.

49. National treatment was one of the major subjects addressed when OECD, in 1976, adopted the Declaration on International Investment and Multinational Enterprises. Today, OECD is discussing the "national treatment" instrument with a view to strengthening and expanding its provisions. Within the OECD region, it is current practice to accord national treatment to investment that has entered the country, though some exceptions still remain in operation, mostly on grounds of national security. If more effective work is to be done in this area, however, there should be recognition of the special issues that arise in a federal system. A format could be provided that would be acceptable (and as close to binding as possible) at both the federal and the State, or provincial, levels. Thus, an agreement on national treatment may be achieved in the near future which would reflect the standards contained in the treaties of friendship, commerce and navigation and on bilateral investment treaties.

50. In the developing world, attainment of consensus on this standard may require a broadening of exceptions to national treatment, at least until these countries narrow the economic gap that separates them from the industrialized nations. One aspect of any effective step towards national treatment would be a commitment to transparency of local laws, regulations and administrative practices.

5. Reciprocity: a related issue

51. Although reciprocity has been much discussed in the context of the Uruguay Round of trade negotiations, it would not appear to be a major issue in relation to foreign investment (but it could provide useful protection for individuals). There is, of course, a factual imbalance between major capital exporters and small-nation importers of capital. The apparent disparity and the actual imbalance of relevance of a provision of national treatment, for example, has not impeded the adoption of bilateral investment treaties. Reciprocity may not be a difficult concession on the part of a capital-exporting nation.

52. In relation to trade, reciprocity has come to be part of the "level playing field" vocabulary. Its relevance to investment issues is mainly in situations in which certain industries are closed off to foreign investment. These are situations which to a considerable extent are handled in bilateral agreements, such as the said bilateral investment treaties, where reciprocity means basically that standards of protection and treatment of investors apply both ways. As an investment issue, reciprocity mainly comes into play in situations in which a foreign investment requires services from abroad or fresh infusion of capital. In that context, it should be considered an aspect of the national treatment standard.

C. Emerging standards: right of entry and establishment

53. The nexus between trade, finance and investment in the international arena has been brought to prominence in the negotiations on trade in services in the Uruguay Round of trade negotiations. In those negotiations, typically "investment-related" issues such as right of establishment have arisen in the context of "trade-related" investment discussions (including trade and investment in services, and intellectual property protection).

54. Difficulties in this field are illustrated by the fact that the right of entry is not generally regarded as an aspect of national treatment. In bilateral investment treaties, for example, different restrictions may be imposed upon the admission of investment - which is usually left to the domain of national law - and upon the application of the national treatment standard, which are normally specified in the treaty or in protocols thereof.

55. The provisions in the draft code of conduct on transnational corporations - still under negotiation in the Commission on Transnational Corporations - reflects general understanding in this area. They declare the right of a State to regulate the entry and establishment of transnational corporations, 8/ while stating that transnational corporations should receive fair and equitable treatment in the countries in which they operate. A similar statement is also found in the OECD Guidelines for Multinational Enterprises. 9/ These understandings basically restate the existing commitment level, not only between developed and developing countries but also among the members of OECD, all of which are developed countries.

56. In this area also traditional attitudes have changed dramatically in the past decade, as have the practices of States. This is mainly illustrated by the new investment regimes now in operation in most countries which have virtually abolished most of the previous restrictions on entry and establishment of foreign investment. The trend is most apparent in developing and Central and Eastern European countries since many of the previous investment laws of those countries imposed severe limitations on the entry and establishment of foreign enterprises. The changes are also symbolized by the number of free trade agreements being adopted in many regions of the world, in which right of entry and establishment is a central feature.

57. While the Uruguay Round completes its work, at the regional level (other than the regional free-trade zones) within the OECD countries, further work is proceeding in this area. The June 1991 OECD ministerial meeting recommended pursuing the goal of liberalizing investment policies, including the right of establishment. This may involve a number of understandings concerning the instrument on national treatment and its amendments; the Code of Liberalisation of Capital Movements; and the Code of Liberalisation of Current Invisible Operations, which have been considerably expanded in recent years to cover most transactions in services.

58. In order best to understand and appreciate the current status of State practice with regard to the scope of the right of entry and establishment it would be useful to undertake a comparative analysis of the scope and coverage of various international instruments imposing commitments on entry and establishment, such as the above-named OECD instruments, the EEC/European Free Trade Association (EFTA) agreement, other free trade agreements and other bilateral and regional instruments. Such a study would also help assess the extent to which the disciplines proposed in the Uruguay Round with respect to right of establishment are already in operation under the existing network of bilateral, regional or interregional commitments applying to broad geographical areas.

IV. THE TREND TOWARDS REGIONALIZATION

59. Regional and global movements towards economic integration affect greatly the existing and future modalities of foreign direct investment. Most of the issues discussed above arise by virtue of the existence of State boundaries. Concepts of "home" and "host" State jurisdiction, of extraterritoriality, of national treatment or of right of establishment may lose some of their significance in a world in which certain aspects of national sovereignty are being surrendered to regional economic institutions.

60. As indicated in the section above, concurrently with the negotiations of the Uruguay Round, which have brought several issues relevant not only to international trade but also to private foreign investment to the foreground of international discussion, many States have commenced (or in some cases concluded) regional free trade agreements or framework agreements for free trade agreements. The United States has such agreements in operation with

Israel and Canada, and has recently concluded framework trade and investment agreements with 11 Latin American countries. It is currently negotiating an agreement that would include the United States, Canada and Mexico and has proposed an arrangement which would include all of the Americas.

61. Meanwhile, the European Community has a target goal of 1 January 1993 for establishing the single European market. Moreover, while the agreements reached by the European Council at Maastricht in December 1991 are too new to be analysed here, they clearly represent a significant step towards European unification. The breakdown of the Soviet Union has led to the creation of the Commonwealth of Independent States, a cooperation agreement providing, among other things, for common currency and close cooperation on economic policies. The southern cone of Latin America has done preliminary work for a free trade arrangement between Argentina, Bolivia, Chile and Uruguay (MERCOSUR). Southeast Asia is considering similar arrangements, with Japan as a participant and the United States having indicated its desire to be a part of a larger economic community including all the Pacific Rim countries. The Central American Common Market, long dormant, has come to life. The Caribbean Common Market (CARICOM) has decided to negotiate as a community on trade matters.

62. In Africa, the impetus is much the same. Integration efforts are being pursued through such subregional bodies as the Economic Community of West African States (ECOWAS), the Preferential Trade Area of Eastern and Southern African States (PTA) and other initiatives which are seen as building-blocks of a much discussed and much needed economic union which would embrace the entire continent. A treaty for such a union was signed by member States for the Organization of African Unity in Nigeria, in June 1991.

63. These developments will inevitably be reflected in investment policy, with a number of significant potential consequences, some of which are discussed below.

A. Building blocks or stumbling blocks?

64. A possibility exists that these essentially regional arrangements may disrupt - at least partially - the global approach to investment and trade issues, exemplified in the Uruguay Round of trade negotiations. The experience of the 40-plus years since the signature of the General Agreement on Tariffs and Trade (GATT), is relevant for an analysis of the type of difficulties that may arise in a world which is trying to reconcile globalization and regionalization. In particular, the extent to which a standard of most-favoured-nation treatment remains useful, given the broad exceptions permitted for groups of States belonging to a regional free-trade or economic union, is significant for both trade and investment.

65. Other critical aspects of the treatment of foreign investors likely to be affected by the existence of regional integration schemes are questions of establishment and commercial presence and of national treatment (or, to be

more precise, "regional" treatment). Even in cases where such standards of treatment are granted to countries outside the group (i.e., as between the members of EC and EFTA), a variety of requirements such as quality control, environmental regulations, intra-merger regulation and so on, discriminating between investment within and outside the group, could act as de facto distortions resulting in significant differences in the treatment of outside investors. Similarly, the trend towards the convergence of fiscal, financial and social policies within regional groups could have a different effect in the business performance of foreign investors from within or outside the area.

66. It may be that the world may break up into regional economic blocs. That prospect seems unlikely, though there will clearly be a degree of economic (and social and political) integration on a regional (or bilateral) basis. As experience with EC and the several external arrangements made by the Community indicates, these regional agreements could lead to enhancement rather than limitation of foreign investment. They could facilitate trade and investment between the regional group and other countries (i.e., some developing and Central and Eastern European countries) for which the regional group may be the main source of capital, trade or technology. Thus, the existence of a common approach for doing business (e.g., EC and PTA company law charters), common external tariffs, common fiscal incentives, and complementarity of use of natural and other resources among member countries, which are among the common features found in many regional agreements among developing countries, could facilitate the flow of foreign investment to developing regions.

B. Comity

67. Another consequence likely to arise in this type of situation is that States may be inclined to follow the rule of comity - that is, acceptance as an act of mutual self-interest of the law of another State. To the extent that States feel that they are required to follow another State's law, principles of private international law or conflicts of law apply. Comity represents a more salutary, but often no less effective, step. In either case, conflicts, some of which lay at the root of transnational corporation difficulties, are reduced. Harmonization, partial or more extensive, is often also the result.

C. Harmonization

68. An immediate and beneficial consequence has been the movement towards harmonization of the laws affecting trade and investment in the nations forming part of these regional agreements. Substantial, if not total, harmonization of law in these cases is necessary if the free trade agreements are to be effective. Differences in local laws can also be resolved by way of international agreement. But such agreement which would seek to unify two separate sets of principles in a document may be difficult to adhere to, except for very specialized issues.

69. Where a free trade or common market agreement provides for common approaches and institutions (i.e., a common court to interpret the common law), difficulties in reaching agreement on specific legislation diminish. The member States of the EC have for years attempted to adopt a statute for a European company. With the realization of the 1992 single common market, the chances of that statute's being adopted might increase, just as competition policy in the European Community has now been harmonized under the twin impetuses of a common market and common institutions for interpretation and enforcement.

70. Harmonization of law between members and non-members of free trade agreements or regional common markets is compelled by the need to maintain competitiveness in international investment and trade. Harmonization of accounting standards and of securities, banking, insurance and telecommunications regulations is of the utmost importance. International, or transborder, investment is dependent in large measure on a common understanding of accounting terms and common standards of care and due diligence. In many instances, full understanding of accounting standards may contribute significantly to enhanced competitiveness. Profit-and-loss statements cannot be rationally compared in the absence of harmonized accounting rules. Comparability is often complicated by the fact that foreign direct investment now takes a variety of forms (i.e., equity, debt with equity types of control, franchise or licensing agreements with control features etc.). The ability of the several States in which these transnational corporation activities take place to ascertain transnational corporation relationships and the relevance of such relationships to the allocation of costs and profits demand a degree of disclosure and harmonization of accounting standards greater than what has been traditional.

71. Similarly, a "level playing field" demands harmonization of competition policy. At various times in the present century, enterprises in various countries have been accused of waging unfair competition, mainly by gaps in legislation or by different theories and approaches being taken by Governments. A significant step in this regard was reached with the bilateral antitrust cooperation agreement adopted between the United States and the EC recently. 10/ In addition to coordinating antitrust implementation and enforcement activities, the Agreement contemplates ad hoc consultations in order to resolve specific issues and regular meetings in order to exchange information and views on antitrust policy.

D. Export of law

72. The expression "export of law" is not an established term. It has been coined to explain one of the modalities by which harmonization of law often takes place today. A single State or a group of States may harmonize its laws with those of another State or group as part of their joining in a common regional scheme or free trade area. In most instances, however, this process takes place by way of extension of the standards already in place in one State or group to another State or group. The recent agreement between the EC and

EFTA provides a good example of the many aspects of economic regulation that are being harmonized between these two groups as a result of the establishment of the European economic space. Many of these standards already applied within one group and have simply been extended to the countries members of the other group.

73. In some instances, the extension of the law already in place in another country might lead to a significant improvement of local standards in such areas as environmental and consumer protection, restrictive business practices, corrupt practices and so on. Some countries might find it easier to introduce certain standards as part of the overall package provided by the joining in a common market or free trade agreement than to adopt them under other circumstances.

74. A single State may also harmonize regulations by exporting its own law by way of extraterritorial decrees. To some extent, this has been done in the past in the financial field, given a sufficient amount of economic and financial power to impose standards. An important aspect of this type of harmonization occurs to a substantial extent in the field of securities trading. The enormous importance of several markets for the issuance and trading of corporate (and other) securities has meant that corporations have been forced to adopt standards approved by such markets as condition of access. Neither of the major stock exchange sites would accept trading in securities issued by entities that do not adhere to certain essential standards of accounting.

E. Uniform law and model law

75. As already indicated, in many specialized fields, harmonization, in greater or lesser degree, is achieved via international agreement. The technique of a uniform law is perhaps most effective but at the same time more difficult to achieve. On the way to a uniform law, there are such steps as the adoption of common practices or even common terms; INCOTERMS, an attempt to eliminate misunderstandings based on terminology in international commercial transactions, is one example that comes to mind. Clearly, as commercial practice is increasingly internationalized, harmonization of practice becomes inevitable. Similarly, States often draw on agreed privisions of international codes (i.e., the Set of ... Principles and Rules for the Control of Restrictive Business Practices, and the code of conduct on transnational corporations) as models for their own laws. This is so because the use of models facilitates the task of drafting a new law and, more importantly, because national laws that reflect internationally agreed provisions are more likely to meet the expectations of foreign investors and home countries. 11/

76. In all the above, the current trade negotiations in the Uruguay Round, as well as the stream of bilateral and regional trade agreements, also play both a causal and a consequential role. Investment and trade are intimately interwoven. Unless investment is able to proceed easily across national

boundaries and is assured of equitable treatment once within the foreign borders, trade - certainly trade in services - cannot flourish. Successful conclusion of the Uruguay Round will contribute significantly to the harmonization of national investment and trade regimes, which in turn will facilitate a symbiotic flow of productive investment across national boundaries. The efficiency of world trade and production depends on the adoption of global standards in both sectors.

V. NEW ISSUES

77. The basic issues that underlay international activity from the 1940s to the 1980s were, on the one side, protection of the foreign investor and, on the other side, control of their activities. These issues became all the more important with the increasing role and significance of the transnational corporation in the world economy. Transnational corporations are no less significant in both trade and investment today than they were when the Panel of Eminent Persons first met or when OECD took the step of formulating standards for such corporations. Issues of sovereignty and supervision of transnational corporation activities are, however, still of importance.

78. But the scenario has vastly changed. The enormous turnabout in the prevailing economic climate in Eastern Europe and in many developing countries has given a new perspective to traditional issues and defined other important ones. Increased - if not new - emphasis is now placed on many of these criteria.

A. Privatization and competition

79. The current wave of privatization in many developed and developing countries, and the massive privatization measures being adopted as a result of the political and economic transition in Central and Eastern Europe are the direct result of the prevailing dominance of the market economy. To be effective, however, privatization requires certain standards to be in place. In a few situations of large and more or less financially self-sufficient economies, privatization may take place within the limits of a single economy. But in most cases it involves foreign investment and participation. This is particularly so when privatization is used to deal with large economic units, many functioning in areas of close interest to the general public - i.e., transport, communications, and power distribution. State control of such enterprises has convincingly been demonstrated to be inefficient and costly. Hence, privatization gives priority to these enterprises.

80. But to privatize does not eliminate the public interest in these sectors of the national economy. In most of the industrialized nations, a public regulatory body supervises the activities of public utilities, whether privately or publicly owned. Such a regulatory body is likely to have authority with respect to issuance of licences required to expand business or to enter into new business activities. It may also have authority in relation to pricing policy.

81. While the tendency is to reduce such supervision to the extent possible, it is seldom eliminated when competition cannot be relied upon to regulate. In a number of privatization instances, especially in economies newly entering a private enterprise regime, such competition does not exist. In such cases the newly privatized enterprises may be heavily dependent on external expertise and financing. The need in these situations for the extension of present accords dealing with restrictive business practices is evident.

82. From the viewpoint of the privatizing nation, the expected benefits may, in the absence of some such standards or rules, be illusory. Safeguards should be provided to ensure that privatization takes place at a fair evaluation; in some cases, the managers of State enterprises have been said to form groups to take over the enterprises themselves, at a valuation set by themselves. In other cases, the interests of labour as well as of consumers have not always been taken fully into account.

83. In any case, the success of a private enterprise economy depends to a large extent on the existence of competition within that society. Since the world economy is moving towards a private enterprise system, it would appear to be important to strengthen the internationally agreed norms protective of competition. Competition policy has been important in the development of the industrialized nations. For decades, the United States has had measures intended to preserve or to enforce competition. The Treaty of Rome includes major provisions on competition and on the prohibition of not only anti-competitive agreements but also undesirable concentrations of economic power within a single firm. These are principles which are generally useful - if not essential - within all market economies. They would appear to be especially relevant to the circumstances of States that have recently moved to become market economies and which have utilized privatization of State enterprises as a means of so doing.

B. Securities, banking and insurance supervision

84. The need for adequate measures of securities regulation and supervision has been emphasized by recent events. Even without such abuses of securities trading manipulation, the need for supervision would still be clear. Despite extensive regulation in certain countries, the liberalization of the world financial markets has made the international securities market particularly vulnerable to manipulation and abuses. Without adequate mechanisms for supervision, the consequences of such practices for the public and private sectors could be devastating.

85. Similarly, the recent failure of some transnational banks suggests that the international framework for transnational banking is deficient. Questions have been raised regarding prudent supervision, adequacy of regulations and enforcement procedures and auditing requirements. Most conspicuous is the lack of mechanisms to deal with the effects of the closure or failure of a transnational bank. National regulatory frameworks aim to protect depositors, shareholders and creditors of banks from the imprudent or irregular or

fraudulent actions of bank managements. They also have mechanisms which are set in motion to deal with the effects of a closure or failure of a bank. The recent failures of savings and loans associations and commercial banks in the United States, the United Kingdom and Finland offer good examples of the rescue packages which were set in motion by regulators to maintain public confidence in the banking system.

86. These national arrangements do not have counterparts at the international level. Quite the contrary, the vigorous implementation of such measures at the national level may impede similar fair solutions being effected at the international level. In devising or improving international mechanisms for dealing with and supervising closures and failures of transnational banks, account would have to be taken of the new trends and developments in international banking. In particular, the increasing deregulation of the international financial markets would be an important aspect to be taken into account.

87. Insurance is another area in which internationalization is evident. For the same reasons, it is necessary for supervision to be exercised on an international basis, to ensure the security of those seeking insurance protection. With the services sector entering into the realm of trade negotiations, and with countries pressing to open their doors to foreign insurance companies, it becomes essential that adequate protections be available, particularly in certain types of insurance, such as life or health insurance, which could affect large sections of the population - and the most vulnerable ones. The international nature of the insurance industry and the presence of major insurance and reinsurance firms suggests - if it does not compel - a measure of international study of standards applicable to transnational aspects of insurance, and the adoption of them.

C. Transfer pricing

88. The practice of transfer pricing is not new, but it has become more significant as a result of recent developments. Indeed, as a large and increasing part of world trade becomes intra-transnational corporation trade, the need for international mechanisms effectively to address this issue assumes greater importance. Many States have adopted measures to prevent the establishment of artificial transfer pricing (i.e., prices other than those used in arms-length transactions). Since these measures generally involve comparison with prices set independently, they are particularly difficult to enforce when the transactions take place within the context of a transnational corporation which may or may not record them impartially. Thus, the strengthening of international cooperation in this area through the adoption of instruments and mechanisms designed to prevent such practices could have a significant net effect on the effectiveness of national fiscal policies.

D. Corrupt practices in international transactions

89. As indicated above, the basic principles that underlie the issue of corrupt practices were well established in previous decades. The problem of corrupt practices, however, has not receded in recent years, but in many respects, it has been aggravated by the complexity of current economic exchanges. To some extent, certain aspects of artificial transfer pricing, restrictive business practices, bank failure and securities trading manipulation could be regarded as illicit practices, or as some of the problems that add new dimensions to the topic. In a more narrow sense, the subject of corrupt practices - e.g., bribery of public officials - in international business transactions has been an issue before the Economic and Social Council for many years. An international agreement on illicit payments is near completion but for the issue of extraterritorial enforcement. Present sentiment seems to lie in the direction of the revival of the proposed convention or at least of the adoption of some practical mechanisms that would help prevent corrupt practices. By means of a number of studies and activities, the Centre is currently looking into ways and means of putting such ideas into operation.

E. Environment and investment

90. Concern over the relationship between environment and economic development is not new. It has, however, acquired in recent years a sense of urgency beyond that of any other period. Despite the fact that environmental concerns spurred adoption in OECD years ago of the principle that the "polluter pays", a number of environmental disasters have not been avoided.

91. Since transnational corporations are a major factor in international trade and production, it is evident that environmental standards applicable to their operations are a feature of discussion in these forums. A great deal of work has been done in this area by a number of international institutions. The Centre, in particular, has sponsored a series of studies and a symposium with major participation on the part of transnational corporations, which resulted in the adoption of a set of Criteria for Sustainable Development Management and a set of recommendations for Agenda 21, to be addressed by the United Nations Conference on Environment and Development.

VI. CONCLUSION: A POSSIBLE OUTLINE FOR THE EMERGING INTERNATIONAL FRAMEWORK FOR THE 1990s

92. It is clear that the world economic environment has undergone significant changes from the conventional and theoretical format of the discussion that ran from the 1940s through the 1970s. One of the most significant changes relates to the increasing globalization of the world economy. Transnational corporations have played a significant role in that process which, in turn, has shaped the new structures and strategies of the global transnational corporation. The close interrelations of the present commercial world and

the way in which business and investment are being conducted do not diminish, but rather increase, the need for a global and comprehensive framework on foreign direct investment which effectively responds to the present challenges.

93. Many of the basic principles and standards that were elaborated during the formative period of an international investment regime are still relevant and valid. What has perhaps changed is the manner in which some of these standards are being used, interpreted and applied by Governments and transnational corporations in the pursuance of their current policy objectives. It is therefore expected that such principles and standards, when written in new articles of proposed international instruments or understandings, will reflect the perceptions and approaches that States and enterprises now bring to the negotiating table. It is also expected that when applied today, such principles and standards will equally reflect the new circumstances.

94. Still, seen from the perspective of the functioning transnational corporation in today's world economic conditions and relations, several specific issues have remained important in the international agenda of negotiations. Many of these issues have been the subject of the work of regional institutions. These include aspects of theory and practice involving extraterritoriality, issues of national treatment or the application of some rules of international law. But the intermingling of home and host countries and perceptions deriving from observed practice may alter the format of the debate.

95. The nexus between trade, finance and investment in the international arena emphasized in the Uruguay Round, and in the commitments undertaken in the context of regional economic integration schemes have brought to prominence typically "investment related" issues such as the right of establishment and of commercial presence. These issues would be essential aspects of the emerging overall framework.

96. But as recent developments in OECD appear to confirm, these trends and the variety of instruments originating from the intensified normative activity that is now taking place within and between regional institutions enhances the need for the elaboration of a comprehensive, balanced and universal international framework that addresses the various issues, principles and standards affecting foreign direct investment and transnational corporation activity.

97. A global framework that meets these characteristics would thus integrate and consolidate what has been achieved so far and would address also the new issues arising in the international agenda. These issues would give new perspectives to traditional standards, while defining new ones, and would complete the overall outline of the emerging international framework for foreign direct investment of the 1990s.

Notes

1/ United Nations Conference on Trade and Development, Final Act and Related Documents (United Nations publication, Sales No. 1948.II.D.1). See also International Law Quarterly (Summer, 1948), pp. 283-345.

2/ The draft convention was prepared at the initiative of a group of private international lawyers and businessmen known as the International Association for the Promotion and Protection of Private Foreign Investments, with headquarters in Geneva. It takes its name from its principal authors, Dr. Hermann Abs and Lord Shawcross.

3/ The text of the draft convention is reproduced in International Legal Materials, vol. 1 (1968), p. 120.

4/ The text of the Convention has been published by the International Centre for Settlement of Investment Disputes as document ICSID/2.

5/ See Code of Liberalisation of Capital Movements and Code of Liberalization of Current Invisible Operations (Paris, Organisation for Economic Cooperation and Development, 1990).

6/ The complete text of the Third ACP/EEC Convention (signed at Lomé on 8 December 1984) is reproduced in The Courier, No. 89 (January/February 1985). The complete text of the Fourth ACP/EEC Lomé Convention (signed at Lomé on 15 December 1989) is reproduced in The Courier, No. 120 (March/April 1990).

7/ See, for example, the recent bilateral investment treaties signed by Argentina, Venezuela, and Bolivia, among other Latin American countries.

8/ See the most recent text of the draft code E/1990/94, annex, paras. 48 and 49.

9/ OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts (Paris, Organisation for Economic Cooperation and Development, 1992), annex I. Guidelines for Multinational Enterprises, para. 7.

10/ Agreement between the Government of the United States and the Commission of the European Communities Regarding the Application of Their Competition Laws (September 1991).

11/ On the legitimation effects of codes of conduct, see, for example, Debra L. Miller and Joel Davidow, "Anti-trust at the United Nations: a tale of two codes", Stanford Journal of International Law, vol. 18 (1982), pp. 347-375.

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ACTIVITIES OF THE UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS AND ITS JOINT UNITS

Activities of the United Nations Centre on Transnational Corporations and of the joint units established with the regional commissions

Report of the Secretary-General

SUMMARY

The present report provides an account of the activities of the United Nations Centre on Transnational Corporations and the joint units established with the regional commissions since the seventeenth session of the Commission.

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INTRODUCTION

1. At its seventeenth session, the Commission on Transnational Corporations requested the Secretary-General to submit to the Commission at its eighteenth session a report on the activities of the United Nations Centre on Transnational Corporations and the joint units established with the regional commissions. The present report was prepared in response to that request. 1/

I. EXECUTIVE DIRECTION AND MANAGEMENT

A. Scope of the programme during the 1990s

2. During the biennium 1992-1993, the Centre will embark on the implementation of the proposed medium-term plan for the period 1992-1997. The plan identifies the basic scope of the United Nations programme on transnational corporations within the major programme activity on international economic cooperation for development. The programme explains the subjects of foreign direct investment and of transnational corporations and identifies problems addressed and courses of action of the intergovernmental machinery and the Secretariat. The growing quantitative weight of foreign direct investment in the world economy demonstrates its increasing significance as an integrating force for international flows of not just capital but also of trade and technology, key variables in the development process. Remarkable recent changes in the structure of international economic relations and policy paradigms have created conditions that place transnational corporations in a position to play a central developmental role. In this situation, the challenge for national and international practitioners of development policy is to further their understanding of the global context in which transnational corporations operate, how the universe of transnational corporations is changing, the factors that determine their choices with regard to the location of investment, what potential impacts such investments are likely to have in terms of various developmental objectives such as technology transfer and promotion of exports, the extent of intersectoral differences with regard to motivations and developmental effects of transnational corporations and what role public policies can play in attracting foreign direct investment as well as strengthening their positive impact on national economic development. The analytical function of the programme supports the examination of those questions.

3. Furthermore, the Uruguay Round of multilateral trade negotiations covers issues beyond the traditional field of trade in goods, including such increasingly important areas as trade in services, trade-related investment measures (TRIMs) and trade-related aspects of intellectual property rights. The programme reflects the considerable policy attention that Governments give to those dimensions of international economic cooperation.

4. There is also a pressing need to improve conditions for international investment with a view to increasing capital flows to developing countries, and to supporting the establishment of positive links between foreign investors and host countries to help develop their human resources and entrepreneurial capacities. In that regard, the elaboration of an international framework to facilitate investment relations and avoid conflicts, promoted by the programme, is of utmost importance.

5. The programme also addresses the new issue of the transition of a large group of countries from a centrally planned economy system to a market economy. It deals, more specifically, with the needs of those economies that recently opened their doors to international investment, particularly through assisting in the creation of legislative and institutional conditions for an investment climate beneficial to both foreign investors and their host countries.

6. The programme further emphasizes the Centre's programme of technical cooperation, which will continue to focus on advisory services to host countries with regard to foreign investment policy regimes and institutional structures; expert assistance in contract negotiations; and training and human resource development, in which public and private sector officials and personnel are imparted critical skills and knowledge required for effective foreign investment transactions in today's increasingly competitive and diversified environment.

7. At its second regular session of 1991, the Economic and Social Council adopted three resolutions concerning transnational corporations: 1991/54 on the activities of transnational corporations in South Africa; 1991/55 on the recommendations of the Commission on Transnational Corporations at its seventeenth session and its contribution to the preparations for the United Nations Conference on Environment and Development; and 1991/56 on the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting. In those resolutions, the Council requested the Centre to continue its work on transnational corporations in South Africa; to prepare a consolidated report in which the latest trends in foreign direct investment would be analysed; to update and complete its work on external indebtedness; to promote in its technical cooperation activities interregional, intraregional and subregional economic integration; to support small and medium-sized enterprises in developing countries; and to prepare recommendations on cooperation for the protection and enhancement of the environment and to examine the feasibility of mechanisms for mobilizing resources for that purpose. The mandate of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting was extended.

B. Resources

8. The growth of the programme exerts considerable strain on the resources available for its implementation. In that regard, the Centre greatly appreciates the extrabudgetary financial support given in 1991 by the Governments of China, Denmark, Finland, France, the Netherlands, Norway, Sweden and Switzerland for its technical cooperation activities. Considerable extrabudgetary support was given by a number of Governments to the research and technical cooperation activities of the joint units. The Rockefeller Foundation and the Friedrich Ebert Foundation provided special funding for activities on the environment and on the interrelationship between foreign direct investment and technology. The volume of technical assistance projects funded by the United Nations Development Programme (UNDP) continued to soar, exceeding $3.5 million in 1991. The Governments of Denmark, France, Germany, Italy, Japan, the Netherlands and Sweden continued to sponsor junior professional officers placed in the Centre and in its joint units with the regional commissions.

9. In 1991, the Centre offered internships to approximately 50 students from around the world. Students of business, economics and law from, inter alia, Germany, Hong Kong, India, the Netherlands, Romania, Thailand, Trinidad and Tobago, Turkey and the United States of America were offered unpaid internships. The interns were able to make a useful contribution to the Centre's work, while gaining insight into the functioning of the Organization.

C. Coordination

10. In 1991, the Centre continued its close cooperation with the organizations and bodies of the United Nations system, as well as other organizations, including the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), the secretariat of the United Nations Conference on Environment and Development, the World Bank, the United Nations Industrial Development Organization (UNIDO), the International Organization for Migration (IOM) and the Organisation for Economic Cooperation and Development (OECD). Activities included the following:

(a) The Centre assisted UNCTAD in preparations for its eighth session and undertook several joint studies, including a study on The Impact of Trade-related Investment Measures on Trade and Development: Theory, Evidence and Policy Implications, 2/ and a study on the role of transnational corporations in the promotion of manufactured exports from developing countries through joint ventures and non-equity links. Also in 1991, a comprehensive project on the role of transnational corporations in world trade and especially in exports from developing countries was launched jointly with UNCTAD. The Centre, UNCTAD, IOM and the Friedrich Ebert Foundation jointly initiated a project on foreign direct investment, trade and international migration. The Centre also cooperated with the Friedrich Ebert Foundation in the organization of its 1991 seminar for members of the Second Committee;

(b) Together with the World Bank, the Centre has begun work on a publication entitled Handbook: Issues in the Liberalization of International Transactions in Services;

(c) The Centre has collaborated with OECD in the preparation of a background document for a workshop on foreign direct investment in the dynamic Asian economies, to be held in 1992;

(d) With regard to the United Nations Conference on Environment and Development, the Centre participated in the Conference's preparatory meetings in Geneva and New York, while the Conference secretariat contributed to the preparation of the Executive Director's recommendations (E/C.10/1992/2). The Centre assisted UNIDO in organizing its Ministerial Conference on Ecologically Sustainable Industrial Development;

(e) The Centre participated in the work of the Advisory Committee for the Coordination of Information Systems (ACCIS) on the question of database dissemination. It also exchanged information with the International Labour Organisation (ILO) concerning employment by transnational corporations, and shared data and methodologies of data collection and analyses with UNCTAD, the regional commissions, the World Bank, the International Monetary Fund (IMF) and the General Agreement on Tariffs and Trade (GATT);

(f) In the area of accounting and reporting, the Centre continued to cooperate with standard-setting bodies such as the International Accounting Standards Committee, the International Federation of Accountants, the Working Group on Accounting of the Organisation for Economic Cooperation and Development, the Fifteenth Directorate of the Commission of European Communities, and the International Asset Valuation Standards Committee, as well as a number of regional organizations. The Centre contacted over 200 national accounting bodies to inform them of the latest activities of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting. The Centre and the Fédération internationale des experts-comptables francophones, with the support of ILO and the World Bank, held an International Conference on the Development of Accounting in Africa. The Centre also participated in two OECD meetings, one on intangible assets (May 1991) and the other on privatization (November 1991). In addition, the Centre attended consultative group meetings of the International Accounting Standards Committee and its meeting on conceptual frameworks;

(g) The Centre continued its active cooperation with regional and international agencies that either provide or are the recipients of technical assistance, such as UNIDO, UNCTAD, the World Bank, the Food and Agriculture Organization of the United Nations (FAO), the Association of South-East Asian Nations (ASEAN), the Andean Pact, the Caribbean Community, the Commonwealth Secretariat, the Preferential Trade Area for Eastern and Southern African States (PTA) and the Economic Community of West African States (ECOWAS). Cooperation with other United Nations agencies, in particular, has intensified as a result of the inter-agency coordinated programme approach that is a UNDP requirement with respect to the preparation of the fIfth programming cycle of activities.

11. The Centre expanded its cooperative links with the academic world. In particular, the Centre cooperated with scholars throughout the world in the preparation of the UNCTC Library on Transnational Corporations, a 20-volume review of the field, which brings together academic experts in all fields related to transnational corporations. Furthermore, the Centre participated in the 1991 session of the Academy of International Business by organizing and chairing a number of panels.

D. Publications programme

12. During the reporting period, the Centre attached high priority to the implementation of its publications programme. More than 80 technical papers and parliamentary documents were prepared by the Centre and its joint units in 1991. They covered subjects as diverse as the development of accounting in Africa, industrial hazards disclosure, trade-related investment measures, and foreign direct investment and technology transfer in India. More specifically:

(a) In October 1991, the Centre issued the World Investment Report 1991: The Triad in Foreign Direct Investment, 3/ the first in a series of annual reports that provide data on trends in global foreign direct investment, along with in-depth analyses of selected themes relating to transnational corporations. The World Investment Report 1991 was well received and widely reviewed in the international business press and in academic journals.

(b) The Centre also issued the first two studies in a new Environment Series, which explores the special responsibility that transnational corporations have for the protection of the environment. Transnational Corporations and Industrial Hazards Disclosure 4/ recommends disclosure legislation for developing countries to enable effective accident prevention and emergency response. Climate Change and Transnational Corporations: Analysis and Trends 5/ focuses on six transnational energy-producing and energy-consuming industries, in which corporate practices have a direct and major impact on the problems associated with global climate change.

(c) The Centre addressed the important issue of human resources development in the University Curriculum on Transnational Corporations. 6/ The three-volume curriculum presents a basis for long-term training for government and public sector officials in economic development, international business and international law.

(d) As a contribution to the transition process of the countries of Central and Eastern Europe to a market economy, the Centre issued in early 1991 The Challenge of Free Economic Zones in Central and Eastern Europe: International Perspectives. 7/ The study, which was translated into Russian and Ukrainian, found that free economic zones may be an avenue for facilitating the integration of the previously closed socialist economies into the international economic system. Additionally, they offer an opportunity to

experiment with new organizational and management approaches that could be used in the country at large.

(e) The first of a series of publications in coordination with the United Nations Conference on Trade and Development was published, namely, The Impact of Trade-related Investment Measures on Trade and Development: Theory, Evidence and Policy Implications; 2/ it examines whether TRIMs have a significant impact on international investment and trade decisions.

(f) Two new publications of reference value for researchers and information providers are Transnational Corporations: A Selective Bibliography, 1988-1990 8/ and Transnational Business Information: A Manual of Needs and Sources. 9/

(g) After 32 issues in the same format, The CTC Reporter has been redesigned with the objective of attracting a new and expanded readership. Renamed Transnational Corporations: A Journal of the United Nations Centre on Transnational Corporations, it will be published three times a year. The new journal will focus on in-depth, policy-oriented research findings on issues relating to the activities of transnational corporations.

(h) Transnationals, the Centre's quarterly newsletter, continued to give government officials, company executives, academics and others a brief look at new issues and concerns in the area of international business. Each issue draws from the Centre's most recent research and technical assistance. Numerous letters from government officials and university professors underscored its usefulness in policy-making and teaching.

13. On the technical end of the publications programme, the Graphic Presentation Unit in the Department of Conference Services developed a new cover design for the Centre's publications. Unfortunately, there has been no resolution of the problem of editing the Centre's technical publications; since no financial resources are allocated for that purpose, the Centre has had to count almost exclusively on its in-house editing capacity.

E. Outreach activities

14. The main objectives of the Centre's outreach activities are twofold. The first objective is to reach those whose work might benefit from the Centre's research and technical assistance experience. The second is to strengthen the Centre's work by creating a larger pool of insight and experience on which to draw.

15. The publication of the first World Investment Report, in July 1991, was marked by unprecedented visibility in the international press. This was the culmination of a concerted effort to forge stronger relations with the news media, both local and foreign. Articles on the Centre and foreign direct investment appeared in, among other papers, the Financial Times, The Economist and the Christian Science Monitor, provoking interest and world-wide

follow-up. At the same time, regular contributions to smaller journals and publications, such as the Development Forum, continued to result in a large number of developing country requests for information. In 1992, the outreach activities will focus in particular on cementing relations with the international media.

16. The Centre also intensified its efforts to make the members of the Second Committee aware of the new trends and policy issues in foreign direct investment bearing on their work. Three weekend seminars were organized by the Centre, two on transnational corporations and sustainable development, and one that dealt more generally with transnational corporations in international growth and development. From the feedback received, the members of the Second Committee found the seminars useful. Should additional funds become available, the Centre plans additional briefings.

17. To attract a wider readership to its publications, the Centre sought the expertise of the Sales Section of the Department of Conference Services. Advertisements for the Centre's publications were placed in international business journals and mass mailing campaigns were carried out to attract new readers.

18. The Centre updated and reprinted the brochure on the technical cooperation programme. The brochure was sent to Governments of developing countries and to UNDP resident representatives to inform them of the kind of advisory assistance the Centre offers.

19. In 1991, as in previous years, the Centre's staff gave numerous briefings to groups from, inter alia, universities and non-governmental organizations.

F. Ad hoc expert group meetings

20. Ad hoc expert group meetings provide insights into major international issues related to transnational corporations and discussion of future avenues of work on transnational corporations. In 1991, 10 such meetings were held.

21. For example, an ad hoc expert group meeting, held in October 1991, launched the research effort for the World Investment Report 1992. The meeting provided insights into the interrelationship between foreign direct investment and economic development, focusing on the contribution of transnational corporations to host countries' trade, technology, human resources, investment and environment. The Centre also began work, in collaboration with the World Bank, on a Handbook on Issues in the Liberalization of International Transactions in Services. The Handbook is intended to be of practical assistance to developing countries in their review and reformulating of policies, including the liberalization of foreign direct investment and trade in services. A joint Centre/World Bank ad hoc expert group met in November 1991 to discuss the scope and methodology of the Handbook. Another one-day expert group meeting considered issues and problems emanating from the closure of a transnational bank (BCCI). The expert group

stressed the need for an effective international framework to deal with the closure of transnational banks. Experts also identified areas for future regulatory reforms, in order to provide a better exchange of information and coordination among national regulatory authorities in the interest of more effective supervision of transnational banking.

22. A series of expert group meetings were organized to elaborate the Centre's work programme in the area of transnational corporations and the environment and to exchange views on related complex methodological issues. One expert group meeting considered the report of the Secretary-General on the contribution of the Commission and the Centre to the work of the Preparatory Committee of the United Nations Conference on Environment and Development and reviewed and commented on the draft of that document. The experts, who included business executives, management experts from academia, representatives from environmental non-governmental organizations, technical experts from other intergovernmental organizations and parliamentarians, focused on the areas in which transnational corporations could contribute to sustainable development and proposed policy recommendations. Another two-day meeting, entitled "Transnational corporations and the environment: planning for the future", was designed to apprise delegations of critical environment and development issues. The agenda included presentations on environmental management, auditing, accounting and international environmental law by experts from academia and corporate executives, mechanisms for the transfer of environmentally sound technologies, such as trade and investment measures, market incentives and new global revenues, to developing countries. An expert group meeting on the recommendations of the Executive Director on transnational corporations and sustainable development, elaborated in response to the request of the Economic and Social Council, took place in late 1991. Expert group meetings were also held on the issues of accounting for privatization and the interrelationship between trade and investment.

G. Expert advisers

23. During the review period, the expert advisers have remained a unique source of high-level expertise and advice to the Centre. Particularly useful was their insight with respect to the future direction of the Centre's work programme. The specific projects and activities in which they participated include the design of the Fifth Survey on Transnational Corporations in World Development, the World Investment Report 1992 and the Centre's input for the United Nations Conference on Environment and Development.

II. SECURING AN EFFECTIVE CODE OF CONDUCT AND OTHER INTERNATIONAL ARRANGEMENTS AND AGREEMENTS RELATING TO TRANSNATIONAL CORPORATIONS

A. Code of conduct

(1991-1992 programme element 1.1)

24. Pursuant to General Assembly resolution 45/186, in which the President of the General Assembly, with the support of the Secretary-General, was requested to arrange for intensive consultations aimed at achieving an early agreement on a code of conduct on transnational corporations, for presentation to and adoption by the General Assembly at its forty-sixth session, informal consultations were held from 22 to 26 April and on 24 and 25 June 1991 in New York, on 12 July 1991 in Geneva and on 24 and 25 September 1991 in New York. The secretariat provided substantive support for those consultations. A number of background and analytical papers were prepared on the basis of which the President of the General Assembly made some concrete suggestions on the draft preamble and the machinery for follow-up, with a view to assisting in reaching final agreement on the code as a whole.

25. At the June 1991 meeting, it was agreed to set up an open-ended informal working group to discuss the substantive issues and to make suggestions for best disposing of them. The working group decided to elaborate a list of issues that needed to be addressed during the consultations. To that end, the Centre invited delegations to communicate in writing the issues to be discussed, and prepared a note summarizing the responses from delegations. In the light of several important international meetings (including, inter alia, the Uruguay Round of multilateral trade negotiations, the United Nations Conference on Environment and Development and the eighth session of UNCTAD), which could have a bearing on the code of conduct, consensus emerged among delegations, at the last round of consultations, in September 1991, that further intergovernmental consultations on the code of conduct should be postponed until the results of those meetings became known, that is, until June-July 1992. In the interim period, it was agreed that the secretariat should continue its activities relating to the code of conduct with a view to further clarifying the outstanding issues and reviewing and assessing developments relevant to those consultations.

B. International standards of accounting and reporting

(1991-1992 programme element 1.2)

26. The Centre continued to provide assistance to the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting in discharging its mandate to promote the harmonization of accounting standards and to help countries in the process of setting such standards. The work of the Group has become particularly important recently. First, the increased globalization of capital markets makes adequate

information disclosure and accounting standards more important than ever. Secondly, developing countries continuously seek to increase their accounting capacity, but lack the basic infrastructure (i.e., accountants and accounting standards) to do so. Thirdly, the former centrally planned economies have become aware that a crucial step in their transition to market economies is the development of an accounting system capable of measuring financial performance at the enterprise level. A clear indication of the interest in and importance of the work in this area is the expanding membership of the Group - from 21 members in 1986 to 31 in 1991. In recognition of the importance and relevance of the activities in this area, the Economic and Social Council, at its second regular session of 1991, endorsed the recommendation of the Commission to extend the Group's mandate for another five years.

27. During 1991, the Centre carried out, on behalf of the Group, an extensive programme of research, technical cooperation and liaison. The Centre engaged in research in the areas of global and national accounting issues, environmental accounting, privatization and accounting education. The Centre also prepared reports on key international issues in this area (13 reports) and provided substantive service for the session of the Group, held in New York from 5 to 15 March 1991. The report of the Group is contained in document E/C.10/1991/12 and Corr.1. The Centre also organized a workshop on auditing, in the former Soviet Union in February, an ad hoc meeting on accounting problems arising during privatization, at Geneva in September, an International Conference on Accounting in Africa, at Dakar in October, and the final meeting of the International Task Force on Accounting Reform, at Moscow in October.

28. The Centre is currently considering more than 10 technical cooperation projects in the areas of accounting training, standard-setting and strengthening the profession, which were presented at the Dakar Conference. The Centre is also exploring the possibility of setting up a training programme for regulators in emerging capital markets. Considerable effort has gone into communicating and cooperating with numerous international, regional and national accounting bodies. Such outreach not only raises the awareness of crucial issues but also injects a global view into forums dominated by private and/or national interests. Lastly, within the framework of Economic and Social Council resolution 1985/71, in which it was agreed that the results of the work of the Group should be brought to the attention of all interested parties, the Centre prepared its annual report entitled International Accounting and Reporting Issues: 1991 Review. 10/

29. In addition, the Centre continued to support a programme of technical cooperation in accounting education in the former Soviet Union, with the engagement of a number of the largest international accounting firms. During the past two years, over 400 upper-level university students have been trained in western accounting. In 1992, with the help of national and international donors, the programme will be expanded to train professors and practitioners.

C. International, regional and bilateral arrangements and agreements relating to transnational corporations

(1991-1992 programme element 1.3)

30. The Centre prepared a report concerning the international framework for foreign direct investment (E/C.10/1992/8), in which it analysed the evolution of main concepts, definitions and principles relevant to international investment relations and their application to current discussions and practice. Also examined in the report are new issues in international relations that need to be addressed more specifically in a global international framework. Such analysis would facilitate a better understanding of the meaning and significance of the code provisions in today's investment environment. The report will be submitted to the Commission at its present session.

31. Pursuant to resolution 1991/1, adopted by the Commission on Transnational Corporations at its seventeenth session, the Centre prepared a report reviewing the status of efforts by the United Nations to address the issue of corrupt practices in international business transactions (E/1991/31/Add.1-E/C.10/1991/17/Add.1). Thus far, most such efforts have concentrated on the drafting of an international agreement under the auspices of the Committee on an International Agreement on Illicit Payments, for which the Centre provides secretariat services. The report, which also emphasized the main dimensions of the problem for policy makers in today's business transactions, was submitted to the Economic and Social Council at its second regular session of 1991.

32. During the period under review, the Centre was actively engaged in international discussions and symposia involving governmental and non-governmental organizations, as well as academia and other interested groups, on matters relating to issues of international governance, and closely followed developments in other international instruments and forums. In December 1991, the Centre participated in a symposium organized by OECD on the review of the OECD Guidelines for Multinational Enterprises and International Investment, at which the possibilities for expanding the Guidelines to new users and populations, and the interrelationship between the Guidelines and the code, were discussed. Also in December, the Centre, in consultation with local governmental authorities, convened a special meeting in London to consider issues of transnational bank failure. Fifteen experts were invited, including authorities from the legal and accountancy professions, Central Bank Governors, and other governmental authorities. Recommendations for action emerged from that meeting.

33. In addition, the Centre is organizing a brainstorming meeting, scheduled to take place in March 1992, aimed at creating an international monitoring mechanism to improve transparency in procurement processes involving development projects. To that effect, it has prepared a paper examining existing procurement practices and suggesting various options for improvement.

34. The Centre has continued to monitor the evolution of other international instruments relevant to foreign direct investment, notably bilateral investment treaties, which have continued to expand during this period. It has completed, jointly with the International Chamber of Commerce, a new publication containing the latest listing of those treaties.

35. The Centre has also completed a Compendium of Selected International Instruments on Foreign Investment. The Compendium is the first publication of its kind and will reproduce about 80 multilateral and regional instruments. It will be revised and updated so as to provide the main international source for a comprehensive and up-to-date collection of international materials.

III. MINIMIZING THE NEGATIVE EFFECTS OF TRANSNATIONAL CORPORATIONS AND ENHANCING THEIR CONTRIBUTION TO DEVELOPMENT

A. Analysis of general trends in the nature and extent of the operations of transnational corporations

Transnational corporations and international economic relations

(1991-1992 programme element 2.1)

36. Building on the report of the Secretary-General on the trial in foreign direct investment (E/C.10/1991/2), which was submitted to the Commission at its seventeenth session, the Centre published a study entitled World Investment Report 1991: The Triad in Foreign Direct Investment. 3/ In the study, it is noted that, during the period 1983-1989, the flow of world-wide foreign direct investment grew at the rate of 29 per cent - three times faster than the growth of world exports and four times faster than that of world output. Transnational corporations were thus clearly emerging as a much more significant force in the international economy than in the past. A major finding of the study was that world foreign direct investment is dominated by the triad (the European Community, Japan and the United States), both in terms of inflows and outflows. There has been some increase in the sources of foreign direct investment, particularly with the emergence of Japan as a major international investor. However, in terms of inflows, the growing dominance of the triad led to a decline in the share of foreign direct investment received by developing countries. It is further noted that, apart from the rapid increase in quantitative terms, foreign direct investment became increasingly important in economic growth because of its growing interlinkage with trade, financial flows and technology transfer. In that context, it was found that most of the countries were clustered around a triad member in the same region in terms of its foreign direct investment flows. That is in part due to historical, cultural and political links, which had been strengthened by corporate strategies in response to a growing tendency towards regionalization. An important policy implication of that finding is that the scope for national policies to attract foreign investment is becoming more limited as transnational corporations look at regions rather than at

individual countries as their markets, and hence the need for the formulation of foreign direct investment policies in the context of regional economies.

37. The World Investment Report will be part of a new series issued annually by the Centre, presenting data and analysing trends relating to transnational corporations and foreign direct investment. It will focus on a topic emerging from the Centre's ongoing research activities. The World Investment Report 1992: Foreign Direct Investment and Economic Growth will address the impact of the activities of transnational corporations on the growth and development of host developing countries. It will specifically analyse the impact of foreign direct investment and transnational corporations on each of the elements that contribute to growth, namely, investment, trade, technology, human resources development and the environment. In that context, the Centre organized an expert group meeting on transnational corporations and economic growth, which was held in New York on 16 October 1991.

38. The Centre's analysis of the role of transnational corporations in world development is being carried forward in research for the Fifth Survey on Transnational Corporations in World Development, due to be completed by the end of 1992. Many of the issues raised in the World Investment Report 1991 have been further explored, at the request of the Commission, in reports submitted to the current session of the Commission. Global patterns of foreign direct investment are analysed in document E/C.10/1992/3, the contribution that foreign direct investment and other activities of transnational corporations make to economic growth is analysed in document E/C.10/1992/4, while important policy implications are presented in E/C.10/1992/5.

39. The Centre contributed its expertise in those areas to a number of meetings and workshops, including the annual meeting of the Academy of International Business, 17-18 October 1991; an international expert group meeting organized by the United Nations Centre for Regional Development entitled "Organizational behaviour and industrialization: lessons from transnational corporations in the manufacturing and agro-based industries sectors", held from 10 to 13 November 1991; and an International Conference on North American Free Trade Agreement and the Pacific Basin, organized by El Colegio de Mexico, from 25-27 November 1991.

40. The question of policy regimes as a determinant of foreign direct investment and the influence that specific government policies regarding foreign direct investment have on the level of investment flows has been addressed in a study on Government Policies and Foreign Direct Investment, 11/ which was published at the end of 1991. Also, a study entitled The Determinants of Foreign Direct Investment: A Survey of the Evidence, 12/ which analyses factors that cause transnational corporations to undertake investments abroad, has been published.

41. In its continuing series of seminars for members of the Second Committee, the Centre, in cooperation with the Friedrich Ebert Foundation, held an intensive weekend seminar on foreign direct investment in a changing

international economy, at Princeton from 13 to 15 September 1991. The seminars are intended to strengthen the understanding of issues relating to transnational corporations and foreign direct investment among members of the Second Committee who, in the course of their work, are called upon to make decisions on matters dealing with international economic relations. Among the faculty of the seminars are members of the Centre's staff and high-level experts from the academic community and other international organizations. The 1991 seminar dealt with recent developments in the foreign-direct-investment area, including the changing strategy of transnational corporations, and new legal and policy issues stemming from change.

42. The Centre is in the process of completing a study on transnational corporations from developing countries. The study examines the growth of transnational corporations from those countries and identifies the principal characteristics of their investment activities in terms of sectoral distribution, geographical coverage and technological activities. Those characteristics are then related to home countries' development strategies and industrial policies. More importantly, the study examines the benefits that accrue to home developing countries from outward foreign direct investment in terms of their impact on the balance of payment, access to and transfer of technologies and industrial restructuring. From that perspective, the study differs significantly from the available literature on transnational corporations from developing countries. The study should also provide a basis for technical assistance to developing countries with regard to the formulation of policies towards outward foreign direct investment.

43. During 1991, the Centre finalized a study entitled "Regional economic integration and transnational corporations in the European Community, 1957-1985: the record assessed". The study discusses the impact of early integration efforts in the European Community on the activities of transnational corporations in order to address the likely effects of the 1992 integration programme. It is among the only studies to look at the impact of European integration on foreign direct investment in developing countries. The report will serve as the first volume of a two-part study on European integration and transnational corporations. In 1991, the Centre completed field work for the study. The work consisted of detailed interviews with top-level managers from some 60 transnational corporations located in Europe, the United States, Japan and a number of developing countries. The results will shed new light on the impact of regional integration on the investment strategies of transnational corporations and especially the implications of the completion of the single market for foreign direct investment flows to developing countries. The Centre contributed its expertise in this area at a conference entitled "Multinationals in Europe 1992", held at the Institut scientifique de Cargese in May 1991.

44. The Centre continued its research on the role of small and medium-sized transnational corporations in the international economy. In particular, it is examining the contributions those firms can make in the development of developing countries, as well as the role of public policies in enhancing

those contributions; evaluating existing programmes of support in selected developed countries to small and medium-sized transnational corporations wishing to invest abroad; proposing policy options for developed and developing country Governments and international organizations aimed at encouraging the participation of small and medium-sized transnational corporations in activities beneficial to developing countries; and suggesting ideas for a programme of technical assistance to aid developing countries in maximizing the contribution of small and medium-sized transnational corporations to their development. In that context, the Centre participated in the International Small Business Congress, held from 29 September-2 October 1991.

45. Following the publication of The Challenge of Free Economic Zones in Central and Eastern Europe: International Perspectives, 7/ the Centre, in cooperation with the Ukrainian School of International Business and the Ukrainian-American Renaissance Foundation, organized a series of international workshops on free economic zones in Ukraine, at the request of the Standing Committee on Foreign Affairs of the Ukrainian Parliament, between 13 and 24 May 1991. The workshops had as background documents a Russian translation of the above-mentioned publication and a Russian summary of Economic and Social Effects of Multinational Enterprises in Export Processing Zones, which was jointly prepared by the International Labour Office and the Centre. As part of the mission, the Ukrainian law on free economic zones was revised. As a follow-up to the seminar, the volume on The Challenge of Free Economic Zones in Central and Eastern Europe has been translated into Ukrainian and is being published in Kiev. As a further follow-up, a young Ukrainian professional was sent to the Centre for training in issues related to free economic zones and foreign direct investment. Furthermore, a one-day workshop on foreign direct investment and national development was organized in New York for a Ukrainian Parliament delegation on 22 November 1991. Subsequent to the workshop, the Centre prepared notes on the Ukrainian law relating to foreign direct investment, which were sent to the Parliament of Ukraine.

46. The Centre also prepared a set of documents entitled "Materials for the formulation of a foreign direct investment framework", which was sent to the Republics of the former Soviet Union. The package is meant to assist the parliaments and Governments of the Republics in the establishment of an appropriate framework for foreign direct investment and especially in the establishment of free economic zones.

47. At the request of the Mayor and the City Council of Saint Petersburg, the Centre organized an international conference on free economic zones: experience and perspectives, from 10 to 14 December 1991. The conference had as background documentation a draft Russian translation of The Challenge of Free Economic Zones in Central and Eastern Europe, which is expected to be published in 1992.

48. In cooperation with UNCTAD and the International Organization for Migration, the Centre has embarked on a project on foreign direct investment, trade and international migration to analyse, enhance and refine the existing

knowledge of the interrelationship between migration and the role that foreign direct investment and trade can play in this respect, particularly by promoting development and creating employment. On the basis of this analysis, it is expected that policy makers in both the public and the private sectors will be assisted in evolving and/or reorienting policies, institutions and approaches which will ensure the maximum impact of foreign direct investment and trade. In this context, the Centre, in cooperation with UNCTAD, the International Organization for Migration and the Friedrich Ebert Foundation, held a seminar entitled "International migration: the impact of employment policies, foreign direct investment and trade", in New York on 21 and 22 November 1991. The seminar brought together international experts on migration, trade and investment and served as a brainstorming event for the launching of the above-mentioned project.

49. The Centre also assisted UNCTAD in aspects of the preparations for the eighth session of UNCTAD, by providing inputs on specific topics such as the interlinkage between foreign direct investment, trade and technology transfer; trends in national policies with regard to foreign direct investment; and foreign direct investment in services. In addition, the Centre participated in several meetings on major issues of relevance to the eighth session of UNCTAD, including one in Caracas, from 13 to 15 February 1991, which focused on the role of private and public sectors in promoting sustainable development.

50. The initial volumes of the World Investment Directory (ST/CTC/66) have been completed. The Directory is the outcome of more than two years of intensive work that included collecting foreign direct investment statistics, developing a common format for presenting those statistics for all countries, creating a computerized database and coordinating a network of country correspondents and experts on foreign direct investment in developed countries and the largest developing countries in Asia, Latin America and Africa. The Directory consists of six volumes: Asia and the Pacific; developed countries; Latin America and the Caribbean; Africa and Western Asia; Central and Eastern Europe; and global trends. Each of the five regional volumes contains country profiles of the major countries in the respective regions, preceded by an analytical overview discussing the main issues and trends in the inward and outward investment in that region and the regulatory framework within the region and a technical note outlining the main methodological problems and the conventions followed in the Directory. Each country profile contains foreign-direct-investment time-series data on stocks and flows, including their industrial and geographical breakdown; corporate data on the largest transnational corporations in and from each country; a list of the main laws and regulations and bilateral and multilateral treaties relating to foreign direct investment; the main official sources of data; and a bibliography and definitions of the key variables. The sixth volume of the Directory summarizes the five regional volumes by presenting world foreign direct investment flow and stock data. The volume also includes a series of papers on the methodology of foreign-direct-investment statistics, discussing their pitfalls and making recommendations for their improvement.

51. The expertise gained in preparing the Directory was shared at a meeting of the OECD Group of Financial Statisticians, held in March 1991, and will be utilized in a seminar on foreign direct investment in Latin America (organized with the Joint Unit established with the Economic Commission for Latin America and the Caribbean (ECLAC)), and in a workshop on foreign direct investment in the dynamic Asian economies (organized by OECD). As background documentation for this workshop, the Centre prepared a paper on foreign direct investment in Asia and the Pacific during the 1980s and, together with OECD, a paper on foreign direct investment in the dynamic Asian economies. The purpose of the seminar in Latin America is to promote the preparation of a homogeneous and comparable statistical series on foreign direct investment in the countries of the region and at the international level, thereby broadening the experience of national experts in this connection.

52. The Centre continued to work on the UNCTC Library on Transnational Corporations, to be published by Routledge (London). The aim of the library (which consists of 20 volumes edited by experts from the field) is to contribute to a better understanding of transnational corporations throughout the world, in particular in developing countries. The literature on various aspects of transnational corporations has increased in the past 20 years to such an extent that it is difficult to know which approach best covers any particular aspect of transnational corporations. That, in turn, makes it difficult for students, government officials, corporate executives and others to obtain a state-of-the-art overview of various aspects of the emergence, growth, operation, impact and future of those corporations. The purpose of the library is to bridge that gap. The volumes cover the following subjects:

(a) Theoretical perspective;

(b) Historical perspective;

(c) Economic development;

(d) Business strategy;

(e) International financial management;

(f) Organization;

(g) Governments and transnational corporations;

(h) International trade and payments;

(i) Economic integration;

(j) Natural resources;

(k) Industrialization;

(l) Innovatory activities;

(m) Cooperative forms of activity;

(n) Transfer pricing and taxation;

(o) Services;

(p) Technology transfer;

(q) Legal issues;

(r) Market structure and industrial performance;

(s) Human resources;

(t) Codes of conduct.

Eight volumes have been completed and sent to the publisher. The first four volumes are expected to be published at the beginning of 1992. The remaining volumes are in their final phase of preparation and will be sent to the publisher in the first quarter of 1992.

B. Examination of measures strengthening the negotiating capacity of Governments in their relations with transnational corporations

Analysis of laws, regulations and policies relating to transnational corporations

(1991-1992 programme element 2.4)

53. Volume IX of the series National Legislation and Regulations Relating to Transnational Corporations (ST/CTC/105) has been completed and will be ready for publication by the Centre in early 1992. The volume contains a comprehensive study of the foreign investment laws and related statutes affecting foreign investments in 15 selected countries, representing sub-Saharan Africa, Asia and the Pacific, the Middle East and North Africa and Latin America.

54. The Centre is also preparing a handbook on ways to negotiate bilateral investment treaties, focusing on negotiating techniques and drawing on the experience of negotiators. It is intended to serve as a practical tool for future negotiations.

Economic and legal analysis of host country policies

(1991-1992 programme element 2.6)

55. The Centre, in cooperation with UNCTAD, undertook a study on The Impact of Trade-related Investment Measures on Trade and Development: Theory, Evidence and Policy Implications. 2/ With financing from the UNCTAD/UNDP Technical Assistance Programme to assist developing countries to participate more effectively in the Uruguay Round, the project explored a number of questions, including whether and under what circumstances the impact of TRIMs is distortionary; the welfare effects of TRIMs, globally and for the countries applying them; and the contribution of TRIMs to the development process and to the control of anti-competitive practices.

C. Analysis of the political, social, environmental and cultural impact of transnational corporations on host developing countries

1. Activities of transnational corporations in South Africa

(1991-1992 programme element 2.7)

56. Pursuant to Economic and Social Council resolution 1991/54, the Centre prepared for submission to the Commission an updated report on the role of transnational corporations in South Africa (E/C.10/1992/6). The report examines the impact of sanctions on the South African economy which led the Government of South Africa to repeal key apartheid legislation. The reaction of the international community to the repeal of such legislation is then examined in terms of measures repealed and measures still remaining in force. The report also deals with the role of transnational corporations in the South African economy in the 1990s. Following an examination of the disinvestments/investments recently undertaken by transnational corporations, an analysis is made of the domestic market and external constraints to attracting investments from transnational corporations. An optimistic scenario for attracting transnational corporations is then made in the context of the medium- to long-run prospects of the South African economy. The role of transnational corporations in employment and education of black South Africans is also touched upon.

57. Pursuant to Economic and Social Council resolution 1990/70, the Centre also updated the "List of transnational corporations with interests in South Africa" (E/C.10/1992/7), containing information on transnational corporations that have disposed of their equity interests and on those that continue to operate there. Transnational corporations that have disposed of their equity interests were canvassed by mail as to their non-equity links in South Africa and their attitudes towards prospective reinvestment there. Transnational corporations that continue to operate there were queried about changes that may have occurred in their operations during the past year and on their current or prospective participation in social responsibility programmes,

education, training, development, or entrepreneurial efforts directed towards enhancing the skills of the indigenous labour force.

2. Transnational corporations and the environment

(1991-1992 programme element 2.9)

58. In the area of transnational corporations and the environment, the Centre focused on the implementation of section II of Economic and Social Council resolution 1991/55. More specifically, the Centre prepared the recommendations of the Executive Director for mobilizing and encouraging large industrial enterprises, including transnational corporations, to cooperate in efforts to protect and enhance the environment in all countries (E/C.10/1992/2). The recommendations were before the Commission during the first part of its eighteenth session in January 1992.

59. The Centre carried out a benchmark survey of international corporate environmental policies and released the first preliminary statistical results. The survey, which was undertaken with the financial support of the Government of the Netherlands, achieved a 20 per cent response rate. The statistical results of the survey were presented to the three working groups and the plenary meetings of the Preparatory Committee for the United Nations Conference on Environment and Development, at its third session, held at Geneva in August 1991.

60. The first stage of the project, entitled "Options to facilitate the transfer of environmentally sound technologies to developing countries under favourable terms", is well under way and has so far produced two packets of executive summaries. A third packet is near completion. The project is designed around three stages: preparation of 25 executive summaries on new and innovative mechanisms that can help increase the transfer of environmentally sound technologies; circulation of the packets among experts; and presentation of the results to the Preparatory Committee meetings and to the United Nations Conference on Environment and Development. The two packets containing executive summaries have been widely circulated among government representatives, company officials, international organization representatives and other experts (a total of over 500) for comments. The drafts were distributed at the second and third sessions of the Preparatory Committee at Geneva. A preliminary draft on a mixture of options was prepared and discussed at an advisory meeting in November 1991.

61. The drafts have also been distributed at a number of governmental and non-governmental conferences, including the Second World Industrial Conference on Environmental Management, held at Rotterdam in April 1991; the International Working Group Meeting on Technology Transfer, organized by the Aspen Institute and held at Aspen, Colorado, in July 1992; a meeting on financing and environmentally sustainable future, organized by the Investment Management Institute, the Centre and UNEP, held in New York in September 1991; a meeting on North-South relations and the environment organized by Global

Education Associates and held in New York in November 1991; and at several OECD expert group meetings on technology and environment, held at Paris throughout 1991. The financing for this project has been provided by extrabudgetary funds from the Government of Sweden and the Rockefeller Foundation.

62. In response to resolution 1991/55, the Centre provided the Preparatory Committee, at its third session, with information on prototype financial statements that would enable corporations to report their income on a sustainable basis. That input draws on the Centre's project on accounting and reporting for sustainable development.

63. The Centre has been actively participating in the preparations for the United Nations Conference on Environment and Development. It has drafted issue papers for the second session of the Preparatory Committee, participated in the inter-agency meeting on the transfer of environmentally sound technologies and attended the second and third sessions of the Preparatory Committee. The Centre also participated in the ministerial sessions of the regional meeting of ECLAC for the Conference.

64. The Centre has been active in the area of disclosure of environmental information by corporations. In a project aimed at the development of international comparable standards, which would assure consistency in the disclosure of environmental practices by transnational corporations, a questionnaire has been prepared and a number of corporations have been interviewed to provide input for the corporate environmental performance report. It is expected that the project will be completed in early 1992. Activities in this area have included participation in a meeting on company organization and public information to deal with environmental issues, organized by the UNEP Industry and Environment Office, held at Paris in October 1990, and participation in the International Forum on Environmental Information, held at Montreal in May 1991.

65. The Centre has participated in the planning meetings and the Ministerial Conference on Ecologically Sustainable Industrial Development, organized by UNIDO and held at Copenhagen in October 1991. It also attended the Second World Industrial Conference on Environmental Management, held at Rotterdam in April 1991.

66. Cooperation on accident prevention and response is continuing between the Centre and the Organisation for Economic Cooperation and Development.

67. Technical assistance has been provided to Chile, Ecuador and Mexico. In Chile, the Centre is providing expertise to formulate and implement the body of law needed for environmentally sound development of mining activities. Specifically, the Centre is assisting in drafting laws, regulations, norms and quality standards for air, water and land use; the Centre is also assisting in evaluating the need for the proper application, monitoring and enforcement of such laws. In Ecuador, the Centre is reviewing and making recommendations on the draft law for environmental protection in hydrocarbons. In Mexico, the

Centre is providing technical assistance in the formulation of long-term policies and strategies for clean growth. During the last few months of 1991, the recommendations of the Executive Director for the transition to a sustainably managed transnational corporation were prepared as the Centre's contribution to the preparations for Agenda 21 of the United Nations Conference on Environment and Development. The Centre is also assisting the Solomon Islands in formulating environmental legislation, and Mozambique in formulating a mining law.

3. Socio-cultural impact of transnational corporations

(1991-1992 programme element 2.8)

68. In 1989, the Subcommission on Prevention of Discrimination and Protection of Minorities invited the Centre to assist the Working Group on Indigenous Populations to compile information on the investments and operations of transnational corporations on the lands of indigenous peoples. In complying with that request, the Centre designed a questionnaire on transnational corporations' activities, which is being distributed to indigenous groups. More than 700 groups in North America and South America were contacted during 1990-1991, and a progress report was issued on their responses (E/CN.4/Sub.2/1991/49). In 1992, the Centre will expand the project to indigenous groups in Africa and Asia. At the same time, it is analysing some of the responses and writing case-studies based on the materials received.

69. During 1991, the Centre continued its research on women's employment and transnational corporations. It is expected that a background paper will be completed in March 1992 and an expert group meeting organized to discuss the results achieved and to recommend further work.

D. Studies of transnational corporations in specific areas and selected sectors

1. International trade

(1991-1992 programme element 2.2)

70. The Centre is conducting a study, jointly with UNCTAD, on the role of transnational corporations in the promotion of manufactured exports from developing countries through joint ventures and non-equity links such as international subcontracting. Six country case-studies (Colombia, Dominican Republic, Mauritius, Morocco, Thailand and Yugoslavia) are in progress. The results are expected to be published in late 1992.

71. A comprehensive project on the role of transnational corporations in world trade and especially in exports from developing countries was launched in 1991, jointly with UNCTAD. The project will also provide input to the UNCTAD policy paper for its Manufactures Committee, the World Investment Report 1992 and the Fifth Survey. The project will result in a joint

publication on issues related to the role of transnational corporations in the trade of developing countries. The project originated from the needs of both organizations to understand better the interrelationship between trade and foreign direct investment.

2. Transnational banking

(1991-1992 programme element 2.3)

72. The Centre updated and elaborated the reports on transnational banks and the external indebtedness of developing countries (E/C.10/1991/4) and on transnational banks and debt-equity conversions (E/C.10/1991/5); submitted to the Commission at its seventeenth session. Two publications are being prepared to cover these subjects: the first contains an evaluation of the impact of regulatory changes in creditor countries on transnational banks' willingness and incentives to participate in debt-reduction programmes and the need for further action, while the second assesses the developmental impact of debt-equity swaps in the light of four country case-studies (Brazil, Chile, Mexico and the Philippines). Some of the country case-studies were completed in collaboration with the Joint Unit established with ECLAC.

3. Services

(1991-1992 programme element 2.12)

73. After having published nine major reports on services during the period 1988-1990, the Centre continued its work on the role and impact of transnational service corporations on host developing countries and on policy-oriented issues relevant to international transactions in services.

74. A study entitled Transnational Service Corporations: Impact and Policy Issues, including, inter alia, five case-studies on the Maghreb countries (Algeria, Morocco and Tunisia), Mexico, the Andean Pact, Thailand and Zimbabwe, is being finalized for publication.

75. With the financial support of the Danish International Development Agency (DANIDA) and in cooperation with the Technical University of Denmark, the Centre continued its work on the tradability of services by preparing an outline for a case-study on banking services. The outline and issues relating to the methodology for the study were discussed at an informal expert group meeting held at Copenhagen on 11 and 12 November 1991. Participants at the meeting included researchers from the Technical University of Denmark, experts from the banking industry and experts in the field of telematics and information networks.

76. Together with the World Bank, the Centre has also begun work on a publication entitled Handbook: Issues in the Liberalization of International Transactions in Services. The purpose of the Handbook is to assist policy

makers in developing countries to understand the broad policy changes regarding foreign direct investment and trade in services and to assess the importance of an efficient services sector for development. The Handbook is meant to assist in identifying those service industries in which the regulatory framework may require review and the range of instruments that can be utilized to improve the regulatory frameworks. The Handbook is envisioned as the first phase of a larger technical cooperation programme on the expansion of foreign direct investment and trade in services, which will be undertaken by the Centre and the World Bank, if funding can be secured.

77. In 1991, the Centre began work on the Directory of the World's Largest Service Companies - Series Two, as a follow-up to Series One (ST/CTC/110), published in 1990 jointly with Moody's Investors Service, Inc. The second series of the Directory will have a new format consisting of separate volumes on individual service industries, to be published one by one. Based on information provided by the Directory and obtained from other sources, a study on the Determinants of the Transnationalization of Service Industries is under way and scheduled to be published in early 1992.

78. The Centre also contributed expertise to a number of meetings and workshops, including the annual conference of the International Communication Association (session on foreign direct investment, telecommunication and data services), 26-29 May 1991; the annual meeting of the Northeastern Chapter of the Academy of International Business, 2-7 June 1991, with "Services in the global economy" as its major theme; the Teletrade Conference on the Impact of Telecommunication and Data Services on International Transactions in Services, 11-12 September 1991; and the annual meeting of the Academy of International Business, 17-18 October 1991.

4. Other sectors

(1991-1992 programme element 2.11)

79. Many transnational corporations in the manufacturing sector have improved their global competitive positions through the institution of new methods for organizing production. In a project being completed, the Centre is examining the degree to which these new practices on the part of transnational corporations are being transferred to production located in host developing countries.

80. Together with the Joint Units established with the Economic Commission for Africa (ECA), the Economic and Social Commission for Asia and the Pacific (ESCAP) and the Economic and Social Commission for Western Asia (ESCWA), the Centre has initiated a study on transnational corporations and industrial restructuring. (The Joint Unit established with ECLAC is undertaking country studies on this subject.) The study will be conducted in two phases. In the first phase a book-length analysis will be published on the basis of a review of existing empirical literature on the role of transnational corporations in industrial restructuring in its various aspects such as technological

development, changing product composition, export-orientation, organizational changes, and competition and market structure. The study will also include a critical evaluation of existing methodologies for evaluating the role of transnational corporations in industrial restructuring and suggest alternative options. The suggested methodologies will then be used in a second phase to conduct country- and/or industry-specific case-studies.

81. In a forthcoming study on Foreign Direct Investment and Industrial Restructuring in Mexico (ST/CTC/SER.A/18), the Centre and the Joint Unit established with ECLAC analysed the contribution of a group of the largest enterprises with foreign capital in Mexico's manufacturing sector to the industrial restructuring process of that country in terms of improving production efficiency, transferring competitive technology, expanding exports and creating linkages with local supplier industries. Special consideration is given in the study to an evaluation of the performance of enterprises in those respects and to the ways in which that performance has been influenced by macroeconomic policies and regulations governing foreign direct investment. The study attempts to identify policy elements and competitive conditions that must prevail to induce transnational corporations to adopt corporate strategies that promote industrial restructuring in accordance with host country objectives.

IV. STRENGTHENING THE CAPABILITIES OF HOST DEVELOPING COUNTRIES IN DEALING WITH MATTERS RELATING TO TRANSNATIONAL CORPORATIONS

A. Technical cooperation

82. During the period under review, the Centre continued to focus its advisory and training services on economic reform, human resources development, environment and natural resources management and private sector development. The Centre's activities in those broad programme areas were carried out in response to the emerging needs of host developing countries as they restructure their technical assistance programmes towards more sustained growth during the development process. The implementation of the Centre's technical cooperation programme within this framework is in accordance with the guidelines established by the General Assembly for technical cooperation in the 1990s and is financed by government's contributions to the Centre's Trust Funds and by UNDP project funds (see tables 1 and 2). The delivery of training activities is shown in table 3 and the execution of advisory projects in table 4. A separate report of the Secretary-General on the experience gained in technical cooperation activities (E/C.10/1992/10) is also before the Commission. The report contains a discussion on the sharing of financial budgets derived from projects involving transnational corporations, and the relationship between the activities of transnational corporations and national development policy goals.

1. Composition of the technical cooperation programme of the Centre

(a) Economic reform

83. Political developments coupled with dramatic shifts in economic ideologies have provided catalytic changes in target areas for technical assistance among developing and developed countries. Government policy makers and decision makers have been called upon to manage national economies more efficiently within the context of, among other things, the persistent decline of official development assistance and commercial loans. Accordingly, emphasis has been placed on the role of foreign direct investment as a vital element of an overall strategy to mobilize resources based on certain economic reform measures.

84. Host developing countries continue to recognize foreign direct investment as a major source of growth and as one of the critical factors, along with trade, technology and financial flows, accounting for the increasing interdependence of a global economy. Efforts are therefore being made to gear domestic policies towards the creation of a more favourable environment for capital inflows.

85. Within this broad framework of technical assistance, the Centre, in 1991, responded to requests for advisory and information assistance from host developing countries that have recently adopted new economic policies designed to move from a managed system to one adhering, in varying degrees, to a market system and to attract more foreign investors. As reported to the Commission in the previous review (see E/C.10/1991/15, paras. 81-87), the Centre has implemented considerable advisory and training assistance to newly "open door" economies. During the period under review, the Centre continued to provide those services to Afghanistan, Angola, Cuba, the Democratic People's Republic of Korea, Ethiopia, Guyana, Mongolia, Mozambique, Myanmar, Namibia and Nicaragua.

86. During the period under review, the Centre initiated efforts to provide technical assistance to the Mekong Delta countries of Cambodia, Laos and Viet Nam. A programming mission was arranged for those countries in late November/early December to identify immediate needs for technical assistance in the areas of foreign direct investment and technology transfer. Specific areas of assistance have been identified and will be included in the Centre's programme of work for 1992.

87. A special genre of assistance to the newly "open door" economies included advisory and training services provided to Central and Eastern Europe. The Centre's technical assistance has been extended to Albania, Bulgaria and Romania and to members of the Commonwealth of Independent States. Those services addressed reform policies aimed at the reintegration of their economies into the world market, specifically targeting petroleum development, privatization efforts, accountancy development, the establishment of special economic zones and advice on the creation of an appropriate regulatory framework in foreign direct investment.

88. Another highlight of the Centre's technical assistance activities under the programme of economic reform is the advisory services provided to the African National Congress (ANC) in the formulation of investment policies and an investment code for a new South Africa. A number of consultations have been held with the ANC Department of Economic Policy and with South African trade union and business representatives for that purpose. The Centre has also initiated work on developing the terms of reference for a series of policy and sector studies that have been requested by ANC.

89. A significant aspect of the Centre's technical cooperation programme for the newly "open door" economies has been the utilization of technical cooperation among these countries and among those that have had more experience in a market system. The Centre utilizes its vast experience in providing advisory assistance in the area of economic reform to the newly "open door" economies. Assistance in technical cooperation among developing countries is more tangibly manifested through the utilization of experts and consultants from developing countries who have been involved in their own countries' economic reform programmes. The Centre also organized visits of officials from those countries to meet with counterpart officials from other developing countries to discuss common issues, problems and solutions associated with economic reform and foreign direct investment.

90. Interregional cooperation with respect to policies, laws, regulations and institutional mechanisms on foreign direct investment and issues related to transnational corporations is an important instrument for furthering the development process. Intraregional cooperation is not only a medium for the exchange of experiences among the host countries but also reduces the incidence of countries engaging in the costly practice of trying to outbid each other in offering incentives and facilities to foreign investors. During the period, the Centre continued to assist economic integration in East and southern Africa, harmonization of fisheries arrangements in West Africa and harmonization of investment laws in the eastern Caribbean.

(b) Human resources development

91. Human resources development as a target for technical cooperation has been adopted by both donor and recipient countries. Sustained economic reform and growth is preconditioned on efforts taken and success achieved in the area of human resources development. Human resources development has been made an integral part of the Centre's technical cooperation programme as it relates to the development of indigenous capacity of public and private sector officials of host developing countries in their dealings with transnational corporations.

92. The primary manifestation of the Centre's contribution to human resources development continues to be the provision of training services in the form of workshops, round tables, study tours and fellowships, and in-house briefings of government officials by visiting staff members and consultants.

93. During the period under review, the Centre organized national training workshops in Angola, Côte d'Ivoire, Cuba, the Democratic People's Republic of

Korea, Ethiopia, Ghana, Guinea, Nigeria, Romania, the Russian Federation, Seychelles, Thailand and Ukraine. The workshops addressed such issues as project analysis and evaluation, biotechnology, accounting, international procurement, technology transfer, joint ventures, international banking, privatization, free economic zones, and international auditing.

94. Under a UNDP fourth programming cycle project, the Centre provided training assistance to the ASEAN Committee on Finance and Banking by organizing a Conference on ASEAN Financial Systems and a Workshop on Negotiations on Access to Capital Markets, which featured a computerized simulation exercise of a borrowing strategy. Also in 1991, the Centre organized two training activities for the Asia-Pacific region. Senior officials, including ministerial-level representatives from energy and petroleum ministries and national oil companies from 12 countries, attended a high-level round table, which was organized to discuss fiscal and administrative strategies for petroleum exploration and development. Finally, another regional workshop on negotiating joint venture agreements in the tropical hardwoods sector was held. Special focus was given to issues relating to environmental concerns.

95. In 1991, the Centre provided nine fellowships and study tours on investment-related issues for six countries from Africa and Asia and the Pacific.

96. The Centre continued its assistance to institutions of higher learning on issues related to transnational corporations. The three-volume curriculum on transnational corporations, covering the areas of economic development, international business and international law, was published and distributed to participating institutions. For participating institutions in the Asia-Pacific region, support was also provided in 1991 through the distribution of a select number of books and publications in the three disciplines of business, economics and law.

97. In 1991, EMPRETEC, the Centre's programme designed to promote the creation and growth of innovative small and medium-sized enterprises using linkages with transnational corporations, was fully operational in four Latin American and two African countries. Started as a pilot project in Argentina in 1988, EMPRETEC expanded to Uruguay, Chile and Brazil. The project in Paraguay will start in early 1992, the final country in what is becoming an integrated subregional programme. Venezuela, the first country of the Andean Pact subregional programme, will start up shortly. In Africa, EMPRETEC was first introduced in Nigeria in 1989. Ghana, as the second country, was launched in 1990. Attempts are being made to extend the programme throughout the ECOWAS region. In 1991, preparations were finalized to launch EMPRETEC in Zimbabwe. Feasibility studies will be undertaken for Malawi, Botswana, Mozambique, Egypt and Kenya in early 1992. The programme has been very effective in generating and developing new technology-oriented businesses and cross-border ventures among participants.

98. Worldwide, about 10,500 entrepreneurs have applied for the programme. Those who showed the highest potential through written applications, personal interviews and appropriate business proposals were selected as participants. In 1991 alone, 480 new entrepreneurs were trained in 16 workshops, bringing the total number of EMPRETEC graduates to over 1,000. At the same time, international training technology was transferred to 23 local trainers in three languages.

99. About 300 business plans were prepared and analysed by voluntary private sector selection committees. Over $3.5 million in business financing has been arranged with EMPRETEC assistance. More than 140 new businesses have been created in various sectors such as agro-industry, plastic, chemicals, automobile parts, biotechnology, informatics, food processing and textiles. Nearly 200 businesses continue to be generated at an increasing rate as the programme matures and expands to other countries. Some 15 regional and about 20 national joint ventures were formed among former participants, 30 of the entrepreneurs have arranged regional sales agreements and five agreements for transfer of technology have been signed between regional participants. Worldwide, 15 EMPRETEC entrepreneur associations have started networking by sharing their experience and exploring business and investment opportunities.

100. The programme has enlisted the cooperation of over 50 national companies and subsidiaries of the largest transnational corporations such as Apple Computer, Andersen Consulting, Banca Nazionale del Lavoro, Barclays Bank, Citibank, Coca Cola, Dupont, IBM, Ogilvy & Mather, Price Waterhouse and Siemens.

101. EMPRETEC has started to engage in joint activities with other programmes geared towards business development. In 1991, EMPRETEC Nigeria, in cooperation with UNIDO, organized a workshop entitled "Negotiating joint ventures and technology transfer" for Nigerian entrepreneurs participating in an investment promotion forum and rendered follow-up support to selected ventures emerging from the forum.

(c) Environment and natural resource management

102. A large portion of all major natural resources, including hydrocarbons, hard minerals, forestry and fisheries, are in developing countries. However, the developing countries still lack appropriate national capabilities to derive, through effective arrangements with transnational corporations, the optimal economic benefits that their natural resources should otherwise generate to propel their economies into sustainable and higher levels of economic growth.

103. In 1991, the Centre continued to provide assistance to developing countries in the implementation of structural adjustment programmes aimed not only at laying the groundwork for recovery, but also at achieving a more efficient use of their resources. Advisory services were provided to a number of countries, including Albania, Angola, Cameroon, Fiji, Myanmar, Peru, Seychelles, Sierra Leone, Solomon Islands and Uganda, to rationalize

investment policies in the mineral and petroleum sectors and, in some instances, to reduce the producer role of the Government.

104. As government's equity ownership declines as a result of a heavy external debt burden, transnational corporations play an increasingly important role in the economic recovery of those countries, especially in the natural resource sector. The Centre continued to provide assistance in the formulation and negotiations of optimal contractual arrangements with foreign oil and mining companies in Albania, Angola, Seychelles and Sierra Leone.

105. The development of the natural resource sector has, however, been linked to some environmental problems. In some instances, those environmental problems are reversible and in other cases, they are not. In many cases, developing countries do not cater to the protection of the environment and grant concessions or leases to companies, primarily owing to a lack of expertise. Failure to do so can be particularly critical for countries that are heavily dependent on tourism and agriculture.

106. During 1991, the Centre provided advisory assistance to a number of countries, namely, Cameroon, Chile, Colombia, Ecuador, Guyana, Mexico, Mozambique and Solomon Islands, in the formulation of mining legislation with provisions relating to environmental management of resources and operations. Also. in the provision of advisory services concerning specific contractual arrangements with transnational corporations, the Centre has highlighted environmental issues.

(d) Private sector development

107. The partnership between the public and private sectors of developing countries has entered a more challenging era in the 1990s. As the private sector is increasingly recognized as playing a pivotal role in development, the public sector may need to redefine its role, balancing the need for less ownership and extreme regulation with better management monitoring and supervision. The challenge of this new partnership calls for a more systematic involvement of the private sector as the recipient of technical cooperation, particularly in the area of investment.

108. During the period under review, the Centre advised the following countries on privatization activities: Angola, Bulgaria, the Marshall Islands, Myanmar, the Philippines and Romania. In the case of the Philippines, the Centre initiated a project to assist the Government in structuring the implementation of the rules and regulations of an act authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector under a build-operate-transfer scheme. Advice is also being provided on the implementation of the rules and regulations of an executive order on private sector participation in power generation.

109. The EMPRETEC programme described above is one of the ways in which the Centre provides support to private sector development. Another example

concerns the Office of the Board of Investments of the Government of Thailand. The Centre organized four training workshops on drafting and negotiating joint venture agreements with participants only from the private sector. The workshops were organized in the outlying regions of Bangkok to develop the skills of private entrepreneurs in those regions. The Centre also continued to emphasize the inclusion of private sector participants in its regional training activities.

2. The Centre's technical cooperation programme and UNDP

110. Most of the UNDP-financed projects being executed by the Centre under the fourth programming cycle (1987-1991) were scheduled to terminate at the end of 1991. During that period, the Centre's total involvement in UNDP projects amounted to approximately $8.9 million.

111. Pursuant to General Assembly resolution 44/211, new legislation and guidelines on operational activities of the United Nations system have been put in place which will have significant impact on the Centre's technical cooperation programme by placing greater emphasis on the national execution of projects and successor arrangements for agency support costs.

112. In 1991, the Centre undertook a comprehensive exercise to modify its approach to the development and implementation of UNDP-financed advisory and training activities within the framework of the new arrangements and programme themes of UNDP. Country and regional profiles were drawn up based on research, past delivery of technical assistance and recent programming missions to provide the background and justification of the Centre's proposals for involvement in the fifth programming cycle of UNDP at the country and intercountry levels.

113. In addition, the Centre has taken steps to involve itself further in other UNDP-financed activities such as sectoral support activities and special programme resources.

Table 1. Trust Fund of the United Nations Centre on Transnational Corporations: income, disbursements and balances, 1987-1991 a/

(United States dollars)

	1987	1988	1989	1990	1991
Opening balance	1 120 834	1 050 548	1 841 996	1 982 250	2 899 981
Contributions received					
China	20 000	20 000	20 000	20 000	--
Denmark	104 442	116 081	136 668	176 414	239 337
Finland	112 284	124 595	118 287	175 263	262 182
France	--	64 516	67 742	80 000	71 795
Germany	60 187	54 768	--	--	--
Italy	--	1 713 903	1 499 985	--	--
Japan	--	81 600	--	230 000	--
Malaysia	--	--	--	12 000	--
Netherlands	72 855	74 813	70 320	79 260	341 887
Norway	212 023	224 333	215 641	381 045	325 083
Poland	16 700 b/	--	--	6 500 d/	13 743 e/
Sweden	--	249 688	247 893	529 270	--
Switzerland	202 020	185 185	200 669	413 463	209 790 c/
Zaire	500	500	500	1 000	--
Zambia	--	--	636 c/	--	--
Subtotal	801 011	2 909 982	2 578 341	2 104 215	1 463 817
Interest income	102 696	106 742	46 678	114 071	50 000 f/
Total funds	2 024 541	4 067 272	4 467 015	4 200 536	4 413 798 f/
Less disbursements	973 993	2 225 276	2 484 129	1 300 555	1 479 632 f/
Less pledged contribution	--	--	636	--	209 790
Closing balance	1 050 548	1 841 996	1 982 250	2 899 981	2 724 376 f/

(Footnotes on following page)

(Footnotes to table 1)

Note: A dash (--) indicates that the amount is nil or negligible.

a/ Opening and closing balances reflect contributions in non-convertible currency.

b/ Contribution in non-convertible local currency, converted into dollar value at 300 zlotys per dollar.

c/ Pledged, but not yet received.

d/ Contribution in non-convertible local currency, converted into dollar value at 9,310 zlotys per dollar.

e/ Contribution in non-convertible local currency, converted into dollar value at 10,915 zlotys per dollar.

f/ Preliminary figures.

Table 2. Total extrabudgetary resources and disbursements of the Trust Fund and UNDP, 1987-1991 a/

(United States dollars)

	1987	1988	1989	1990 b/	1991 b/
Total resources	3 507 744	5 374 580	6 162 844	7 023 869	8 038 786
Total disbursements, of which:	2 489 892	3 529 358	4 180 594	4 020 482	5 020 352
Trust fund	973 993	2 225 276	2 484 129	1 300 555	1 479 632
UNDP	1 515 899	1 304 082	1 696 465	2 719 927	3 540 720

a/ Unaudited.

b/ Preliminary figures.

Table 3. Expenditures on workshops and other training activities, 1991 a/

(United States dollars)

	Trust Fund	UNDP
AFRICA	86 815	1 158 637
Angola	--	83 124
Côte d'Ivoire	21 267	--
Ethiopia	--	129 800
Ghana	--	314 341
Nigeria	--	585 791
Seychelles	--	45 581
Regional	65 548	--
ASIA AND THE PACIFIC	49 487	558 663
China	48 087	--
Democratic People's Republic of Korea	--	62 632
Nepal	--	12 784
Papua New Guinea	--	8 746
Philippines	1 400	--
Thailand	--	152 263
Regional	--	322 238
EASTERN EUROPE		
Romania	43 601	--
LATIN AMERICA AND THE CARIBBEAN	4 144	251 292
Brazil	--	98 047
Chile	--	36 683
Uruguay	--	116 562
Regional	4 144	--
INTERREGIONAL	100 784	--
TOTAL EXPENDITURES	284 831	1 968 592

Note: A dash (--) indicates that the amount is nil or neglible.

a/ Preliminary figures.

Table 4. Extrabudgetary expenditure on advisory projects, 1991 a/

(United States dollars)

	Trust Fund	UNDP
AFRICA	124 098	955 495
Angola	--	406 541
Cameroon b/	11 304	--
Ethiopia b/	--	156 921
Kenya	--	5 510
Mali b/	42 492	--
Morocco	1 089	--
Mozambique b/	--	28 290
Namibia b/	--	40 725
Nigeria	--	16 600
Seychelles b/	--	16 224
Sierra Leone b/	--	284 684
Regional	69 213	--
ASIA AND THE PACIFIC	23 220	341 494
Afghanistan b/	--	47 877
Democratic People's Republic of Korea	--	13 648
Mongolia b/	18 000	--
Myanmar b/	--	28 415
Nepal b/	--	26 165
Papua New Guinea	--	209 389
Thailand	--	16 000
Regional	5 220	--
EASTERN EUROPE		
Albania	12 013	57 154
LATIN AMERICA AND THE CARIBBEAN	71 396	33 810
Antigua	13 944	--
Argentina	--	24 568
Chile	23 248	--
Ecuador	7 596	--
Guyana b/	1 602	--
Mexico	18 861	--
Peru	6 145	--
Regional	--	9 242
INTERREGIONAL	27 279	--
TOTAL EXPENDITURES	258 006	1 387 953
PERCENTAGE SHARE OF LOW-INCOME COUNTRIES TO TOTAL EXPENDITURES	28	45

(Footnotes on following page)

(Footnotes to table 4)

Note: A dash (--) indicates that the amount is nil or neglible.

a/ Preliminary figures.

b/ Low-income economies: per capita gross national product less than $700 (1986).

B. Comprehensive information system

1. Development of the information system on transnational corporations

114. During the reporting period, the Centre continued the development of an information system on transnational corporations. The system's data components cover individual transnational corporations, industries and sectors, laws and regulations, contracts, macroeconomic data, and information sources. The Commission will have before it the report of the Secretary-General on information requirements for assessing the performance of corporate obligations (E/C.10/1992/11).

(a) Individual transnational corporations

115. The criteria for the collection of data on transnational corporations include size, industry, home country and size of investment. In particular, data on the largest transnational corporations and the largest investors in a host country have been collected for the six-volume World Investment Directory. Two volumes of the Directory, which also includes foreign direct investment statistics and legal and bibliographical data covering Asia and the developed countries, have been completed: (a) on small and medium-sized transnational corporations, for a series of studies on their characteristics and strategies; and (b) on transnational corporations in the services sector, which will constitute information for the second series of the Directory of the World's Largest Service Companies (in preparation). The publication will list the largest companies in commercial banking, primary insurance, reinsurance, insurance brokerage, telecommunications, software, data communication, radio and television broadcasting, motion pictures, and management consulting, and profiles of transnational firms in banking and insurance. Information is also collected on (a) transnational corporations from developing countries; (b) the 50 largest foreign investors, for a study on their foreign investment strategies; and (c) the 1,000 largest non-financial corporations. The data will form the basis of an analysis of transnational corporations, to be included in the Fifth Survey on Transnational Corporations in World Development (in preparation).

116. In addition, the Centre concluded a benchmark survey of corporate environment policies and created a database consisting of the policies of 170 corporations.

117. The information system is based on the data mentioned above, supplemented by a number of commercial databases available to the Centre, which provide directory, financial and historical information on companies worldwide, by the collection of annual reports of the 800 largest manufacturing transnational corporations and by files on microfiche of company reports to security and exchange authorities. Overall, the Centre has access to information on over 100,000 public and private companies worldwide, in various degrees of detail. The existing information on individual transnational corporations makes the Centre an internationally important repository in this area.

(b) Information on industries and sectors

118. Information continues to be collected for the preparation of studies on specific industries and sectors. In the past year, particular attention has been devoted to industries in the services sector.

(c) Information on laws, regulations and treaties

119. The Centre maintains a database of bilateral treaties for the promotion and protection of foreign investments. An updated list of treaties is currently being prepared, to be published jointly with the International Chamber of Commerce. In addition, about 80 multilateral and regional arrangements and agreements relating to transnational corporations and foreign direct investment have been collected, to be published in a compendium on the main policy issues arising in relations between transnational corporations and States. The preparation of the ninth volume of the series on National Legislation and Regulations Relating to Transnational Corporations is near completion.

(d) Information on contracts

120. The Centre has expanded its collection of contracts and agreements in the petroleum sector; a computerized analytical inventory of over 400 non-petroleum contracts and agreements is being finalized.

(e) Macroeconomic information

121. Information on foreign direct investment stocks and flows by country and region were collected and analysed for the World Investment Directory.

(f) Information sources

122. In the past year, the Centre published Transnational Corporations: A Selective Bibliography, 1988-1990. 8/ The publication continues the series of bibliographies issued by the Centre on scholarly and official literature worldwide on transnational corporations and foreign direct investment. The 600-page bibliography gives references to nearly 3,000 works in a dozen languages. The Centre also published Transnational Business Information: A Manual of Needs and Sources. 9/ The manual is intended for countries having to decide on the involvement of transnational corporations in the national economy. It discusses policy objectives of information; techniques and methods to prepare for negotiations; priority industries; selecting strategies for company candidates; in-depth information on companies; and negotiations with transnational corporations. The Centre has also published Workshop Papers of UNCTC: Annotated Bibliography with Indexes, 1978-1990. The work discusses the training activities of the Centre, provides information on more than 100 workshops and contains abstracts of the workshop background papers. In addition, the Centre issued lists of documents and publications put out by the Centre and the joint units with the regional commissions.

2. National information systems

123. The Centre continued to respond to requests from Governments for assistance in developing and refining information systems on transnational corporations. In 1991, the Centre provided information system expertise for the development of the Investment Promotion Centre of Namibia, the Registry of Foreign Investment Agreements of Ghana, a monitoring system of foreign investment projects in Thailand, an information system on technology transfer in Nepal and information technology assessment for a CD-ROM database on company information in the Democratic People's Republic of Korea. In addition, a number of officials from Nepal and the former Soviet Union were trained in the evaluation and use of information resources.

3. Decision support systems

124. In addition to the information activities mentioned above, the Centre has developed and enhanced a number of databases and files to assist in-house executive direction and management. In this regard, the Centre, inter alia, undertook a comprehensive evaluation and update of its roster of experts, with a view to improving the system of retrieval and selection of experts for the implementation of the Centre's technical cooperation programme, particularly through expanding the roster by including qualified candidates from all geographical areas; published two issues of "The register of consultants' reports" (TRANSCIS/CNS), covering over 1,000 reports prepared for the Centre by international experts; established a database of contact persons for advisory services; and updated a mailing list concerning the Centre's publications.

125. In the past two years, the Centre developed a computer-aided in-house publishing system, which is actively used to produce the camera-ready copies of the Centre's publications.

126. Database technology is used extensively throughout the Centre to store and manipulate the variety of information. Information sharing within the Centre and with Governments and non-governmental institutions has been enhanced in the past year through the extensive use of computing and telecommunication equipment. The Centre has recently undertaken an expansion of its local area network, putting a premium on interconnectivity in its design. It has further requested access to the INTERNET network via UNDP. It is expected that those facilities, when in place, will further strengthen the Centre's capability to respond to government requests for information and assistance.

4. Response to ad hoc requests for information

127. Requests for information showed a modest increase in the past year, reaching about 2,700. In addition, the Centre handled about 2,500 queries, usually formulated verbally, bringing the total to about 5,200 requests. Governments continue to account for about one third of the requests. The majority of requests dealt with company information and general economic data. Table 5 provides a breakdown of information requests by category and type of user. Table 6 breaks down information requests by subject.

Table 5. Requests by category and type of requestor, 1991

	Requests made by													
	Governments		Intergovernmental organizations		Trade union organizations		Business organizations		Academic institutions		Media and public interest groups		Total	
	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage
Developing countries	394	56	19	5	33	16	26	12	156	22	99	25	727	27
Developed market economy countries	261	33	54	14	142	65	185	86	428	61	164	41	1 234	46
Socialist States of Eastern Europe	110	11	--	--	24	11	5	2	73	11	33	8	245	9
International organizations	-	-	314	81	18	8	--	--	40	6	104	26	476	18
Total	765	100	387	100	217	100	216	100	697	100	400	100	2 682	100

Note: A dash (--) indicates that the amount is nil.

A hyphen (-) indicates that the item is not applicable.

Table 6. Requests by subject, 1991

Subject	Requests made by: Governments No.	Governments Percentage	Intergovernmental organizations No.	Intergovernmental organizations Percentage	Non-governmental organizations a/ No.	Non-governmental organizations a/ Percentage	Total No.	Total Percentage
Industries	125	16	100	26	202	13	427	16
Individual transnational corporations	210	27	83	21	142	9	435	16
Laws and regulations	50	7	24	6	132	9	206	8
Contracts	86	11	14	4	45	3	145	5
Macro data	75	10	70	18	458	30	603	22
Codes b/	60	8	35	9	249	16	344	13
United Nations Centre on Transnational Corporations	100	13	28	7	166	11	294	11
Information sources	59	8	33	9	136	9	228	9
Total	765	100	387	100	1 530	100	2 682	100

Notes: Percentages do not necessarily add to totals, because of rounding.

a/ Including academic institutions, trade union and business organizations, the media and public interest groups.

b/ Including code of conduct on transnational corporations, international standards of accounting and reporting, code of conduct on transfer of technology, environmental issues etc.

V. REGIONAL ACTIVITIES

A. Joint Unit established with the Economic Commission for Europe

128. During the reporting period, the Joint Unit established between the Centre and the Economic Commission for Europe (ECE) focused its activities on providing support for the Centre's activities in the region and on work related to Central and Eastern Europe.

129. The Joint Unit assisted the Centre in the preparations for an Ad Hoc Expert Group Meeting, held at Geneva from 24 to 26 September 1991, on issues relating to international standards of accounting and reporting. The meeting focused on the privatization of state-owned enterprises in Central and Eastern Europe. The Joint Unit participated in the planning of a project on regional development issues in Eastern Europe and in Latin America. It also assisted the Centre in its analytical work related to transnational corporations and the environment.

130. Within the framework of the work programme of the Economic Commission for Europe, the Joint Unit contributed to projects related to foreign direct investment in Central and Eastern Europe and to the restructuring of state-owned enterprises.

131. The Joint Unit represented the Centre at international meetings and conferences held in the region, including the twentieth session of the Administrative Committee on Coordination (ACC) Task Force on Long-Term Development Objectives, 19-22 March 1991; the second regular session of the Economic and Social Council, 3-26 July 1991; the forty-third session of the Subcommission on Prevention of Discrimination and Protection of Minorities, 5-30 August 1991; the third session of the Preparatory Committee for the United Nations Conference on Environment and Development, 12 August-4 September 1991; the Committee on Development Planning, working group meeting on poverty, environment and development, 8-11 October 1991; and the general meeting between representatives of the United Nations system and the Organization of the Islamic Conference, 19-22 November 1991.

132. The Joint Unit continued its liaison work for the Centre with other international organizations, Governments and government agencies in the region, including the provision of support to them on matters related to transnational corporations.

B. Joint Unit established with the Economic and Social Commission for Asia and the Pacific

133. During the reporting period, the Joint Unit undertook a number of research projects, including (a) studies of the impact of transnational corporations on the international trade of primary commodities (funded by the Government of the Netherlands); (b) transnational corporations in selected service industries of developing countries in the Asia and Pacific region

(funded by the Government of Japan); (c) evaluation of the contribution of transnational corporations to technology transfer in export processing zones and science parks in developing countries of Asia and the Pacific (funded by the Government of the Netherlands).

134. The Joint Unit continued to collect, analyse and disseminate information and data on the activities of transnational corporations in the region, particularly with respect to laws, regulations and general policies relating to the operations of transnational corporations, foreign direct investment flows and non-equity arrangements, data sources for research activities, and information services. It contributed to the volume on Asia and the Pacific of the World Investment Directory.

135. The Joint Unit organized two ad hoc expert group meetings in 1991. One meeting, which reviewed the role of transnational corporations in the international trade of primary commodities, was held at Bangkok from 25 to 27 November 1991. Another meeting, on the activities of transnational corporations and selected service industries of Asian and Pacific developing countries, was held at Bangkok from 2 to 4 December 1991.

136. In 1991, the Joint Unit completed The Asia-Pacific TNC Review (ESCAP/UNCTC Publication Series A, No. 8). The following technical publications will be issued shortly: Transnational Technology Towards the Year 2000 (ESCAP/UNCTC Publication Series B, No. 16); Transnational Corporations in the Trade of Selected Primary Commodities from the Asia-Pacific Region (ESCAP/UNCTC Publication Series B, No. 17); The Participation of Transnational Corporations in Selected Service Industries of Developing Countries in the Asia-Pacific Region (ESCAP/UNCTC Publication Series B, No. 18); and Transnational Corporations and Transfer of Technology in Export Processing Zones and Science Parks in Developing Countries in the Asia-Pacific Region (ESCAP/UNCTC Publication Series B, No. 19).

137. The Joint Unit continued to provide technical and information assistance to countries of the region. The Joint Unit disseminated information to ESCAP member States and to 13 ESCAP focal points in the region. It also assisted the Centre in the provision of advisory services to countries of the region.

C. Joint Unit established with the Economic Commission for Latin America and the Caribbean

138. During 1991, the Joint Unit placed particular emphasis on examining the role of foreign investment in the process of changing production patterns and industrial restructuring in the countries in the region. The project included country case-studies on Brazil, Chile, Colombia and Mexico and will be presented through a series of publications.

139. One of the reports of the series, entitled "Industrial modernization in Mexico" (LC/L.613), presents the results of a survey of the major foreign-owned companies in Mexico's manufacturing sector. Another deals with the restructuring and development of the Mexican motor vehicle industry during

the 1980s (LC/G.1672-P). An overview case-study on Mexico is being finalized. The results of the research on transnational corporations and industrial restructuring in Mexico was also published. It focuses on issues of technological performance of national and transnational corporations in that country (LC/R.1050). The Chilean case-study (LC/R.1054) analyses non-equity forms of investment of transnational corporations within the context of industrial collaboration between developed and developing countries. Two other completed studies examine the experience of Colombia (LC/R.1055 and LC/R.1052) and Peru (LC/R.1053) in this regard, particularly in their dealings with foreign investment in the manufacturing sectors.

140. The Joint Unit continued its research on national policy frameworks on foreign direct investment in the region. It studied the ways in which 11 Latin American countries modified their policies on foreign direct investment during the 1980s and analysed the process of formulating the laws and regulations currently in effect. In addition, two studies on foreign direct investment in Chile during the period 1974-1989 were prepared: one concerns the role of foreign capital in the country's development strategy (LC/G.1678-P), while the other examines specific investment projects involving transnational corporations in the light of national development strategies (LC/G.1677-P). A study on the policies of Brazil regarding transnational corporations and their status during the external debt crisis (LC/R.619) was also issued.

141. The work concerning transnational banks and finance undertaken in the biennium 1990-1991 resulted in the publication of a manual for managers on debt-equity swaps (LC/L.595) and of a companion volume (LC/L.595/Add.1), in which more in-depth information is provided on Argentina, Brazil, Chile, Mexico and the Philippines. A study on financial liberalization in Chile and the behaviour of transnational banks (LC/G.1599-P) was also completed and published.

142. Finally, the Unit undertook a study exploring foreign investment opportunities in the former Soviet Union, and possibilities of setting up joint ventures involving Latin American capital.

143. In the area of information, the Unit complemented its research on the role of transnational corporations and industrial restructuring by the preparation of A Regional Statistical Directory on Foreign Investment and Transnational Corporations, which is expected to be published in 1992. The Unit has also undertaken the collection and analysis of information regarding foreign direct investment in Argentina and Mexico, scheduled for completion in early 1992. Another initiative in the area of information was the preparation of a manual for the pilot computer programme on domestic information systems for decision-making on foreign investment (SITOD). It will be transferred to national agencies and institutions of the region. Another technical assistance activity now under way is the preparation of a methodology for statistical analysis of foreign direct investment in the region. This work, undertaken in close cooperation with other relevant international organizations, is geared towards standardizing national methodologies at the regional level.

144. In cooperation with the Foreign Investment Committee of Chile, the Joint Unit completed the design, planning and implementation of the SITOD information system for foreign investment decisions. The system is composed of a computer database and software which permit users to process information concerning the activities of transnational corporations in the country, to generate the relevant reports for decision-making purposes and to compile national and international statistics. The development of this system in Chile was undertaken as a pilot project, with a view to its subsequent dissemination throughout the region. The computer software was designed in such a way as to be fully adaptable to any country.

145. In collaboration with the Foreign Investment Committee of Chile, a study is being conducted on the changes made in policies on foreign direct investment during the 1980s in Latin America and the Caribbean.

146. Technical assistance was furnished to the National Commission on Foreign Investment and Technology (CONITE) of the Ministry of Economic Affairs and Finance of Peru and to the Office of the Superintendent of Foreign Investment (SIEX) of the Ministry of Finance of Venezuela in connection with the drafting of bills concerning the treatment of foreign capital. In both cases, a document was prepared containing recommendations for the design of legal provisions concerning the treatment of foreign capital and the promotion of foreign investment.

147. Agreements were reached with CONITE and with SIEX regarding the installation of the SITOD software. At their request, steps are being taken to adapt the master programme to the particular conditions existing in those two countries.

148. The Joint Unit, together with the Centre, designed a technical cooperation project with the Ministry of Energy and Mines of Peru. The project includes technical assistance in resolving two specific disputes that have arisen between transnational corporations and the Government of Peru; technical assistance in modernizing the laws pertaining to hydrocarbons, electricity and mining; and training of negotiators in the energy and mines sector to deal with transnational corporations.

D. Joint Unit established with the Economic Commission for Africa

149. During the reporting period, the Joint Unit focused its research on the operations of transnational corporations in the African region, with particular emphasis on issues of development financing. In that regard, the Joint Unit conducted the following case-studies:

(a) Foreign direct investment as a source of development finance in Africa (E/ECA/UNCTC/75). The study addresses trends and prospects of foreign direct investment as a source of development finance for Africa, with particular attention to selected countries in southern Africa. Trends in

foreign-direct-investment flows during the past two decades are reviewed in terms of their spatial and temporal aspects at the global, regional and subregional levels;

(b) Foreign credit and investment in the PTA subregion (E/ECA/UNCTC/81). The main purpose of the study is to examine the issues of foreign credit and investment in the PTA subregion during the 1980s as background for more comprehensive research on the role of affiliates of transnational corporations in member countries, and on the prospects for foreign direct investment in the subregion;

(c) Foreign direct investment in Lesotho (E/ECA/UNCTC/76). The study examines national policies on foreign direct investment and assesses the role of institutional frameworks in connection with development financing, analyses the current role of foreign private investment in main sectors in Lesotho and evaluates the impact of past and present flows of private investment on national structural changes; the study recommends policy options to improve the existing situation.

150. Another area of the Joint Unit's research was the role of transnational corporations in the transfer of technology to the developing countries of Africa. The Joint Unit submitted a paper on the role of foreign direct investment in the transfer of technology through license agreements (E/ECA/UNCTC/78) to a seminar on transfer of development technology in Africa. It also initiated two case-studies on new technologies, namely, biotechnology and renewable energy sources, in the United Republic of Tanzania and Burundi. The studies aim to provide recommendations on policy options and alternatives with a view to assisting African countries to take appropriate measures in their dealings with transnational corporations.

151. The Joint Unit submitted a progress report on the United Nations code of conduct on transnational corporations (E/ECA/UNCTC/80) to the Conference of African Ministers of Trade. The purpose of the report was to sensitize African policy makers on that matter and to enable African States to better coordinate their positions on that important issue.

152. The Joint Unit completed a case-study on the role of transnational corporations in agricultural export products (E/ECA/UNCTC/79). The study is intended to strengthen the national capability of African developing countries to deal with matters related to transnational corporations in one of the key sectors of African economies.

153. In the area of information services, the collection of data on foreign direct investment was given high priority, particularly in the light of establishing a regional database on transnational corporations, in cooperation with the Trade and Development Finance Division of ECA. The Joint Unit also distributed reports and studies prepared by the Centre. The Joint Unit published the eighth issue of Transnational Focus, which is widely distributed to the countries of the region. It also contributed to the volume on Africa and Western Asia of the World Investment Directory.

154. The Joint Unit also provided support to technical cooperation activities executed by substantive divisions of ECA, particularly in the area of environment and services. A number of missions were undertaken to selected African countries (Senegal, Burundi, Zambia) with a view to reviewing problems relating to the development of information systems on transnational corporations, assessing the role of transnational corporations in the transfer of technology and collecting data on transnational corporations and foreign direct investment in the PTA region.

E. Joint Unit established with the Economic and Social Commission for Western Asia

155. The activities of the Joint Unit were suspended at the beginning of August 1990 owing to the events in the Persian Gulf. The professional staff of the Unit were reassigned to the Centre's Advisory Services and Training Branch in New York from September 1990 through August 1991.

156. The Chief of the Joint Unit reported to Amman, the temporary headquarters of ESCWA, in September 1991, and restarted the operations of the Unit. The Unit's research projects due for completion include a technical paper on Arab Petrochemicals and Pricing Protectionism: The Case of the European Community, which consists of two volumes: volume I. Petrochemical Products of Interest to Arab Countries; and volume II. European Community Protectionist Policies relating to Selected Arab Petrochemical Products. Volume I is being finalized, while volume II will be issued later in the current biennium.

157. The Joint Unit contributed to the Centre's project on transnational corporations and industrial restructuring in developing countries, and to the World Investment Directory, particularly to the volume covering Western Asia.

Notes

1/ Official Records of the Economic and Social Council, 1991, Supplement No. 10 (E/1991/31), para. 171 (c).

2/ United Nations publication, Sales No. E.91.II.A.19.

3/ United Nations publication, Sales No. E.91.II.A.12.

4/ United Nations publication, Sales No. E.91.II.A.18.

5/ United Nations publication, Sales No. E.92.II.A.7.

6/ United Nations publication, Sales Nos. E.91.II.A.5, E.91.II.A.6 and E.91.II.A.7.

7/ United Nations publication, Sales No. E.90.II.A.27.

Notes (continued)

8/ United Nations publication, Sales No. E.91.II.A.10.

9/ United Nations publication, Sales No. E.91.II.A.13.

10/ United Nations publication, Sales No. E.92.II.A.8.

11/ United Nations publication, Sales No. E.91.II.A.20.

12/ United Nations publication, Sales No. E.92.II.A.2.